

# The Federal Update for February 25, 2022

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Re: Federal Update

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## News

### States Seek MOE Waivers from ED

Eight States and a U.S. territory have submitted requests to the U.S. Department of Education (ED) to waive the requirement attached to federal stimulus funding that States maintain funding for higher education as a condition of receiving the pandemic aid.

All three pandemic stimulus laws have a maintenance of effort (MOE) requirements which prohibit States from reducing funding for higher education and K-12 education in exchange for receiving federal stimulus funding under the Governor’s Emergency Education Relief fund and the Elementary and Secondary School Emergency Relief fund. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, States were required to maintain funding for fiscal years (FYs) 2020 and 2021 at the average dollar amount spent in FY 2017, 2018, and 2019. While under the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) and the American Rescue Plan Act (ARP), States are required to maintain funding for FY 2022 and FY 2023 based on the overall average percentage of funding spent on education in FYs 2017, 2018, and 2019. Those requirements can be waived in certain circumstances where the resources available to the State have declined significantly, or the State has spent a significant amount on pandemic response which reduces the remaining amount available for regular-year spending. In guidance on Maintenance of Effort under stimulus laws, ED has said it does not anticipate approving many, if any, such waivers and indicates that it will be looking closely on what other costs States incurred.

For at least one State submitting a waiver request for the higher education MOE requirement, the State has increased funding for higher education in terms of dollars, but the overall percentage of funding spent for higher education is less than the baseline comparison point. ED is reportedly reviewing the MOE requests but has not indicated when decisions will be rendered. If any requests are not approved, the States will be required to increase their higher education funding enough to be in compliance, or they will be required to pay back certain federal stimulus funding.

Resources:

Emma Whitford, “States Ask Ed Dept. for Funding Waivers,” *Inside Higher Ed,* February 24, 2022.

Author: KSC

### ED Outlines New Loan Servicing, Forgiveness Plans

This week, the U.S. Department of Education (ED) released a proposal for revamping the student loan repayment system. Unlike previous proposals which relied on a single platform, this model would allow multiple loan servicers to build out their own systems and call centers. Borrowers could make payments through individual websites, but there would be a longer-term plan to transition to a single payment portal. Administration officials say they hope to take the “Unified Servicing and Data Solution” live by December 2023, with a consolidated payment system up and running within five years. Companies hired under the “Next Gen” program will now focus on managing accounts that qualify for specialized benefits like Public Service Loan Forgiveness (PSLF) or closed-school discharges. ED will accept comments on the proposal until March 9th.

The resumption of student loan payments and the high level of denial of PSLF benefits have drawn criticism from student advocates and lawmakers alike. Making things more complicated for the agency, several current servicers have let contracts lapse or announced they will discontinue their work on federal student loans in the coming months. ED has said that “fixing” its contracts to update and modernize the student loan system will be a critical step in the months to come.

The Consumer Financial Protection Bureau (CFPB) also released a policy statement last week which said it will closely scrutinize the handling of changes made to the Public Service Loan Forgiveness program, saying that the agency is already seeing miscommunications about the temporary relief, which expires in November. The new guidance calls on loan servicers to actively identify borrowers who may qualify and to promote the expansion on their website. It also suggests that servicers could be responsible for paying out penalties if they violate consumer protection laws. Servicers have pushed back against the guidance, saying that any “confusion” regarding the temporary expansion of the program was caused by ED’s rollout of the benefit.

Resources:  
Michael Stratford, “CFPB unveils new guidance for loan services on Biden’s PSLF expansion,” *Politico*, February 18, 2022.  
Author: JCM

### SCOTUS Passes on School Vaccine Mandate Case

Late last week, the U.S. Supreme Court opted to not intervene in a case out of San Diego regarding vaccine mandates for students age 16 and up. A student of the district sought emergency intervention from the Supreme Court ahead of a December deadline for the mandate, which would have required students in that school district age 16 and up to be vaccinated to attend in-person classes following the holiday school break.

The mandate, which is being challenged in the California State courts as well, was struck down by a San Diego court on the date the mandate was set to go into effect. The district appealed and a State appeals court is permitting San Diego Unified School District to proceed with the mandate while the case is pending. The Supreme Court opted to not intervene in light of San Diego’s postponement of the mandate implementation. However, this week the district announced that it will proceed with the mandate, with enforcement beginning in September this year.

Other districts in the State developed similar policies but have postponed implementation over concerns that too many students will be required to receive virtual instruction due to lack of vaccination. In addition, the State legislature is considering a Statewide vaccine mandate for students of certain age groups.

Although the Supreme Court did not weigh in on this particular case, the door remains open for the Court to do so should this case or others be appealed to that level.

Resources:

Kristen Taketa, “San Diego Unified’s student vaccine mandate is delayed, again, to next school year,” *The San Diego Union-Tribune,* February 22, 2022.

Susannah Luthi, “SCOTUS declines to weigh in on San Diego’s school vaccine mandate,” *Politico*, February 18, 2022.

Author: KSC

### New Head of HBCU Initiative Appointed

The White House and the U.S. Department of Education (ED) this week announced the appointment of Dr. Dietra Trent as the new executive director of the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity through Historically Black Colleges and Universities (HBCUs). Though this is a White House-directed program, Trent and her staff will be housed at ED.

Trent most recently worked at George Mason University and as Virginia’s Secretary of Education. Advocates say she will have a difficult job given that there has been no one in this position for more than a year. The position is not Senate-confirmable, so Trent may begin work immediately.

Author: JCM

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