



August 25, 2022

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NCHER Federal Update–Fall 2022; Register Today!

On Thursday, September 8th from 2:00 to 3:00 pm ET, NCHER will hold a webinar to review and discuss upcoming federal developments for Fall 2022 with a focus on the policy, political, regulatory, and legal developments impacting the higher education finance community that took place in late summer and what we expect to take place in the fall as we head into the November election. This is a member-only event, which means that you will need to be logged into the NCHER website to [register for the event](#).

Congressional Democrats Share Mixed Reactions to White House's Federal Student Loan Forgiveness Plan

As previously reported, yesterday, the White House and the U.S. Department of Education [announced](#) a new plan to forgive \$10,000 in federal student loan debt for borrowers earning less than \$125,000 and households earning less than \$250,000 with the amount increasing to \$20,000 for borrowers who were eligible for Pell Grants while in postsecondary education. The Department also announced that it was extending the current student loan payment and collections pause through December 31, 2022. Over the last 12 hours, the plan has received positive reviews from the House and Senate Democratic leadership such as Senate Majority Leader Chuck Schumer (D-NY) and Sen. Elizabeth Warren (D-MA) who put out a joint statement lauding the Biden Administration for taking an unprecedented step toward relieving federal student loan debt, calling the step “the single most effective action that the President can take on his own to help working families and the economy.” The Senate Democrats added, “No President or Congress has done more to relieve the burden of student debt and help millions of Americans make ends meet. Make no mistake, the work – our work – will continue as we pursue every available path to address the student debt crisis, help close the racial wealth gap for borrowers, and keep our economy growing.”

However, not all Congressional Democrats were as enthused by the loan forgiveness plan. Several Democrats said that a more targeted relief program addressing the root problems of college affordability should have been prioritized over one-time cancellation while others worried about the messaging of taking an executive action rather than working through the legislative process to provide relief to student borrowers. The following are quotes from select House and Senate moderates Democrats:

Sen. Catherine Cortez Masto (D-NV): “I don’t agree with today’s executive action because it doesn’t address the root problems that make college unaffordable. We should be focusing on passing my legislation to expand Pell Grants for lower income students, target loan forgiveness to those in need, and actually make college more affordable for working families.”

Rep. Jared Golden (D-ME): “This decision by the President is out of touch with what the majority of the American people want from the White House, which is leadership to address the most immediate challenges the country is facing.”

Rep. Chris Pappas (D-NH): “[T]his announcement by President Biden is no way to make policy and sidesteps Congress and our oversight and fiscal responsibilities. Any plan to address student debt should go through the legislative process, and it should be more targeted and paid for so it doesn’t add to the deficit.”

Rep. Sharice Davids (D-KS): “It’s not how I would have addressed the issue.”

Rep. Tim Ryan (D-OH): “While there's no doubt that a college education should be about opening opportunities, waiving debt for those already on a trajectory to financial security sends the wrong message to the millions of Ohioans without a degree working just as hard to make ends meet.”

Sen. Michael Bennet (D-CO): "In my view, the administration should have further targeted the relief, and proposed a way to pay for this plan. While immediate relief to families is important, one-time debt cancellation does not solve the underlying problem." For additional coverage, see the following articles:

[*Inside Higher Ed*](#) and [*The Chronicle of Higher Education*](#) continue coverage of the White House’s federal student loan forgiveness plan with Democrats calling the announcement a win for low- and middle-income Americans and Republicans calling the move legally questionable.

[*The Chronicle of Higher Education*](#) includes an op-ed from University of Tennessee at Knoxville Department of Educational Leadership and Policy Head Robert Kelchen who argues that the President’s debt relief plan carries many unknowns, including whether it can survive a legal challenge.

[*NPR*](#) reports on the three things that student and parent borrowers should know about the President’s student loan announcement.

[*CNN*](#) reports that President Joe Biden’s plan to slash some federal student loan debt could help millions of borrowers, but a decision he spent months wrestling over could also have profound and unpredictable electoral consequences.

[*NBC News*](#) reports that almost half of Latino student loan debt is expected to be forgiven under the White House’s plan.

[*Newsweek*](#) reports that the federal student loan forgiveness plan is drawing comparison

to the GI Bill.

Biden Administration Releases Legal Basis for Federal Student Loan Forgiveness Plan From ED and DOJ

Yesterday, the White House released two legal opinions that seek to explain the legal authority that the Biden Administration is relying on to cancel federal student loan debt. First, the U.S. Department of Education released a [legal memorandum](#) from the Department's General Counsel Lisa Brown, which concludes that the Higher Education Relief Opportunities for Students (or HEROES) Act of 2003 grants the Secretary of Education broad authority to provide relief on a categorical basis to address the financial harms of the COVID-19 pandemic. The HEROES Act provides that, in connection with a war or national emergency, the Secretary may waive or modify any statutory or regulatory provision applicable to the federal student financial assistance programs as the Secretary deems necessary "to ensure that ... recipients of student financial assistance under title IV of the [HEA] who are affected individuals are not placed in a worse position financially in relation to that financial assistance." Ms. Brown states that the U.S. Supreme Court has recognized that, in empowering a federal official to exercise his or her authority as the official deems necessary, Congress has granted the official broad discretion.

Second the U.S. Department of Justice's (DOJ) Office of Legal Counsel released a separate [legal memorandum](#) that attempts to explain in more detail the legal basis for cancellation. In that memo, DOJ states that one of the core purposes of the HEROES Act is to ensure that recipients are not placed in a worse position financially because of a national emergency, and states that it has no difficulty in conceiving of circumstances in which the Secretary of Education might find that debt cancellation might ensure that recipients are not placed in a worse financial position. The DOJ opinion states that the legislative history of the HEROES Act and past administrative practice reinforce their reading of the HEROES Act that the Secretary can use his waiver and modification authority to cancel federal student loan debt. The memorandum concludes that "Congress used the word 'necessary' in a more flexible and capacious sense, as meaning 'appropriate' or 'conducive' rather than 'essential,'" thus granting the Secretary the leeway to carry out such action. The memorandum notes that the Department's actions in March 2020 in suspending payments for every federally held student loan were not necessary to avoid financial harm for some debtors to rebut some criticisms that the action is executive

overreach.

Finally, both opinions take issue with the memorandum from the Department of Education Principal Deputy General Counsel for the Trump Administration that was released in January 2021. Ms. Brown recommends that the memorandum be formally rescinded as substantively incorrect. DOJ states that, contrary to the 2021 memorandum, there would be no violation of the Appropriations Clause of the U.S. Constitution, as cancellation of federal student debt would not require drawing money from U.S. Treasury. Referring to the statement in the 2021 memorandum that Congress “does not hide ... elephants in mouseholes,” DOJ states there is no mousehole here because the Secretary has sweeping authority to waive or modify any statutory or regulatory provision.

Wharton School Releases Budget Brief Estimating Cost of Federal Student Loan Forgiveness

Earlier this week, the University of Pennsylvania’s Wharton School published a budget brief titled, [Forgiving Student Loans: Budgetary Costs and Distributional Impact](#). The brief modeled several loan forgiveness options, including the \$10,000 in forgiveness per borrower with an income cap of \$125,000 for individuals and \$250,000 for households, which matches the plan laid out by the Biden Administration. The brief estimates that this proposal will cost \$298.4 billion. The brief also provided cost estimates if the program had no income cap and was expanded to \$50,000 in forgiveness per borrower. The Wharton School also examined the distributional effects of loan forgiveness, finding that between 69 and 72 percent of all debt forgiven accrues to borrowers in the top 60 percent of the income distribution. Under the plan announced yesterday, Wharton estimates that borrowers in the bottom through middle income quintiles will receive 57.82 percent of all relief.

For additional coverage, see this article from [CBS News](#).

House and Senate Democrats Send Letter to Education Secretary Cardona to Extend PSLF Waiver

Earlier this week, over 100 Congressional Democrats, led by Senate Health, Education, Labor, and Pensions Committee Chairwoman Patty Murray (D-WA), Senate Appropriations Committee Chairman Patrick Leahy (D-VT), Sen. Elizabeth Warren (D-

MA), and House Appropriations Committee Chairwoman Rosa DeLauro (D-CT), sent a [letter](#) to Education Secretary Miguel Cardona urging the U.S. Department of Education to extend the time limited waiver for Public Service Loan Forgiveness (PSLF) through at least July 1, 2023. The letter referenced the Department's proposed changes to the program through the negotiated rulemaking process, which are slated to go into effect on July 1, 2023. The lawmaker said that only an estimated 15 percent of the 9 million public service workers with federal student loan debt have filed paperwork to begin tracking qualified payments under PSLF, and that the waiver program has accounted for 89 percent of borrowers that have received PSLF forgiveness through June 30, 2022. The letter added that extending the limited waiver program will enable more servicemembers and other federal employees to make progress toward forgiveness. "As more than 20 state attorneys general have pointed out, public service workers—particularly those in healthcare and education—continue to face challenges such as burnout and personal sacrifice to keep our nation safe during the pandemic and recovery," the letter said. In addition to urging the Department to extend the deadline for the PSLF waiver program, the letter concluded by asking the Secretary to increase outreach to public service workers to ensure that they are aware of the waiver and its requirements.

U.S. Department of Education News

For today's *Federal Register*, click [here](#).

The following announcements were posted to Federal Student Aid's Knowledge Center website:

- [\(CB-22-14\) 2022-23 Supplemental Campus-Based Funds](#)
- [\(GRANTS-22-10\) Third and Final Pell Grant Administrative Cost Allowance Payments for 2020-21 Award Year](#)
- [\(GRANTS-22-09\) Second Pell Grant Administrative Cost Allowance Payments for 2021-22 Award Year](#)
- [Comment Request: FAFSA Form Demographic Survey](#)
- [Comment Request: Federal Perkins Loan Program Regulations](#)
- [Comment Request: Agency Information Collection Activities: National Student Loan Data System \(NSLDS\)](#)

General News

[Higher Ed Dive](#) summarizes the latest changes to the federal student loan program proposed by the Biden Administration, including federal student loan debt cancellation, a new income-driven repayment plan, and changes to the Public Service Loan Forgiveness program.

[Higher Ed Dive](#) reports that parents and guardians of students who are deciding where to attend college want to hear from institutions of higher education directly during the search and are highly concerned about cost and value, according to a new report from consulting firm, EAB.

An online version of this Daily Briefing is available to view and print from the [Daily Briefing Section](#) of the [NCHER e-Library](#).

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