NCHER

# DAILY BRIEFING

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## In Today's Edition


- States, Department of Justice File Briefs in Lawsuit Challenging Federal Student Loan Forgiveness
- Department of Education Announces Regulatory Changes to PSLF and IDR, Declines to Extend October Deadline
- Department of Education Releases Final Rules on 90/10, Prison Education, and Change in Ownership and Control
- NASSGAP Report Says State Student Financial Aid Declined in 2020-2021
- NCAN Releases Report Finding Decline in College Affordability for Pell Grant Recipients
- NASFAA Releases Case Studies on How Changes to FAFSA Will Impact Student Aid Eligibility
- Committee for Responsible Federal Budget Releases Fiscal Blueprint, Includes IDR Reform
- U.S. Department of Education News
- General News


## States, Department of Justice File Briefs in Lawsuit Challenging Federal Student Loan Forgiveness

Earlier this week, six states and the U.S. Department of Justice (DOJ) filed briefs in the lawsuit challenging the U.S. Department of Education's federal student loan forgiveness.

As previously reported, the six states appealing the dismissal of their challenge to the loan forgiveness plan are seeking an emergency injunction pending appeal from the U.S. Court of Appeals for the Eighth Circuit. The U.S. District Court for the Eastern District of Missouri had dismissed the case for lack of jurisdiction but the Eighth Circuit set an expedited briefing schedule on the motion, with the federal government's brief due Monday and the brief from the states due on Tuesday.

In its **opposition to the motion for an emergency order**, DOJ argues that the plaintiff states have failed to meet the justifications required for a stay. It argues that Congress granted the Secretary of Education broad authority to ensure that national emergencies do not financially harm federal student loan borrowers and that, in response to the COVID-19 pandemic, Education Secretaries from two Administrations invoked that authority to suspend interest accrual and payments on federally held student loans. As those protections wind down, Secretary Miguel Cardona reasonably determined that many borrowers would be at heightened risk of delinquency and default once repayment resumes and it is necessary to provide targeted debt relief to federal student loan borrowers affected by the pandemic under the HEROES Act of 2003. DOJ says that the loan forgiveness plan meets an enumerated objective of the HEROES Act: that borrowers "are not placed in a worse position financially in relation to" their loans "because of their status as affected individuals." The agency further argues that the "major-questions" doctrine does not apply because Congress intended to give the Secretary maximum flexibility. DOJ's brief states that the plaintiffs' standing argument is principally based on financial losses to a federal student loan servicer and argues that the states have not demonstrated they can sue on behalf of the organization. Finally, DOJ argues that the plaintiffs have not satisfied other requirements for an injunction because an injunction will harm the public interest and plaintiffs have not shown any concrete injury to themselves.

In its **reply to the motion**, the plaintiffs argue that the states have standing because the federal student loan servicer is an arm of the state, but all of the states have standing on account of their direct tax losses, the harm from consolidation into the Direct Loan program, and their sovereign interests. The states claim that the loan forgiveness plan is clearly illegal. "The Department's contrived reasons for rejecting the major-questions doctrine do not override the clear evidence confirming that it applies. And the agency's baseless reading of the HEROES Act places practically no limits on the Secretary's power to discharge debt during or after national emergencies." The states claim that the Department does not deny that its plan seeks to place borrowers in a better position rather than simply preventing them from slipping into a worse position and urges the court to enjoin this clearly unauthorized agency action.

As of today, the Eighth Circuit has yet to rule on the motion for an emergency injunction.

## Department of Education Announces Regulatory Changes to PSLF and IDR, Declines to Extend October Deadline

On Wednesday, the U.S. Department of Education **announced** that it was taking executive action to make additional regulatory changes to the Public Service Loan Forgiveness (PSLF) program and a one-time payment count adjustment for those borrowers enrolled in Income-Driven Repayment (IDR). The steps would bring more student and parent borrowers eligible for discharge of their federally held loans. At the same time, the Department said that the time-limited waiver of PSLF would end on October 31st and that it will not be extended despite calls for such action. It encouraged borrowers to take the necessary steps to apply under the time-limited waiver before the deadline.

According to the press release, in April 2022, the Department announced one-time improvements to address historic inaccuracies in the count of payments that qualify toward forgiveness under IDR. As a result of these past failures, borrowers who were in repayment for 20 or 25 years or longer are unable to receive forgiveness under IDR, and borrowers who were in repayment for 10 years or longer while working in public service may not receive PSLF. To address these inaccuracies, the Department will adjust a borrower's account by granting credit toward IDR and PSLF for:

- Any month in which a borrower was in a repayment status, regardless of whether payments were partial or late, the loan type, or the repayment plan;
- Any month in which loans were in an eligible repayment, deferment, or forbearance status prior to consolidation;
- Months while a borrower spent at least 12 months of consecutive forbearance;
- Months while a borrower spent at least 36 cumulative months in forbearance; and
- Any month spent in deferment (exception for in-school deferment) prior to 2013.

Beginning in November 2022, borrowers who have 20 years (240 monthly payments) or 25 years (300 monthly payments) of payments through these changes will start receiving loan discharges. Borrowers who applied for PSLF prior to October 31, 2022 and reach

120 payments due to the deferment and forbearance changes will also receive loan discharges. The Department will continue implementing discharges for borrowers who reach the thresholds for forgiveness in the months after November 2022. In July 2023, the Department will automatically apply the same payment count treatment to all Direct and Department-managed Federal Family Education Loans for borrowers who do not otherwise reach the number of months necessary for forgiveness.

The Department also announced that it would be codifying many of the improvements included in the time-limited waiver into its final rule on PSLF. These programs would allow borrowers to obtain credit for late, partial, and lump sum payments if the borrower also certifies qualifying employment; and award credit for certain months in deferment or forbearance, such as those tied to military service or deferments for economic hardship or cancer treatment if the borrower also certifies qualifying employment. These changes will assist those borrowers who missed the October 31st deadline.

For more information on the changes and new regulation see this **fact sheet** released by the Department. For further news coverage, see these articles from ***Business Insider*** and ***The New York Times***.

## Department of Education Releases Final Rules on 90/10, Prison Education, and Change in Ownership and Control

Today, the U.S. Department of Education **announced** that it was releasing final rules that would made modifications to the 90/10 rule, expand access to prison education programs for incarcerated students, and mandate changes in ownership and control of colleges and universities. First, the new 90/10 rule changes would restrict what for-profit colleges may count toward the “90” portion of the 90/10 calculation. Previously, for-profit colleges could obtain 10 percent of their revenue from non-federal sources by counting federal dollars outside of federal student aid, such as G.I. benefits, towards this requirement. The new regulation, which is implementing changes made under the American Rescue Plan Act last year, says that for-profit colleges must count all federal funds on the 90 side of the rules’ requirements. Second, the new prison education rules would provide the regulatory framework that colleges and universities will need to comply with in order to expand eligibility for Pell Grants for qualifying prison programs. Third, the new regulations establish a new process for colleges and universities to follow when changing ownership. They update the definition of a nonprofit institution to control how financial benefits can be provided to a former owner and require institutions of higher education undergoing a change in leadership to notify both the Department and the institution's students at least 90 days in advance. The final rules are expected to be published in the *Federal Register* soon and will go into effect on July 1, 2023.

## NASSGAP Report Says State Student Financial Aid Declined in 2020-2021

This week, the National Association of State Student Grant and Aid Programs released its annual Survey Report on State-Sponsored Student Financial Aid. The report found that, in the 2020-2021 academic year, states awarded $14.78 billion in total state funded student financial aid, a slight decrease of 0.1 percent in nominal terms and about 1.3 percent in constant dollar terms from the $14.8 billion awarded in 2019-2020. The report says that the majority of state aid (87 percent) remains in the form of grants. In 2020-2021, about 4.1 million grant awards were made representing about $12.9 billion in need and non-need-based grant aid. This represents a decrease of about 0.4 percent from the $12.95 billion in grants awarded in 2019-20. Of the grant money awarded in 2020-21, about 73 percent was need-based and about 27 percent was non-need-based. Other key highlights from the report, include the following:

- Funding for undergraduate need-based grant aid decreased slightly nationwide from $9.3 billion in 2019-20 to about $9.15 billion in 2020-21, a change of about 1.8 percent in nominal terms.
- Eight states (California, Illinois, New Jersey, New York, Pennsylvania, Texas, Virginia, and Washington) awarded about 6.3 billion in undergraduate need-based grant aid, accounting for about 69 percent of all aid of this type.
- States provided about $1.8 billion in non-grant student aid, including loans, loan assumptions, conditional grants, work-study, and tuition waivers. Tuition waivers represented about 51 percent of non-grant aid.

Most states reported state-funded undergraduate grant programs with a need component. Twenty-four states identified undergraduate programs which made awards based only on merit. Exclusively need-based aid constituted 45.9 percent of all aid to undergraduates, exclusively merit-based aid accounted for 20.9 percent, with the rest, 33.2 percent, accounted for by other programs and by programs with both need and merit components. Georgia, Louisiana, South Carolina, Virginia, and Washington provided the greatest amount of grant aid on a per capita basis. Georgia, Louisiana, South Carolina, Tennessee, and Washington provided the most undergraduate grant dollars compared to undergraduate full time equivalent enrollment.

For additional coverage of the report, see this article from ***Inside Higher Ed***.

## NCAN Releases Report Finding Decline in College Affordability for Pell Grant Recipients

The National College Attainment Network (NCAN) recently released a report titled, **The Growing Gap: Public Higher Education's Declining Affordability for Pell Grant Recipients**. According to the report, for students to complete postsecondary education, they must be able to afford it but financial concerns play an outsized role in locking some students out of college. Students of color, students of limited economic means, and students who are the first in their family to attend college experience lower rates of postsecondary access and attainment than their peers. Through its research, NCAN found that truly affordable public postsecondary institutions are dwindling in numbers, while unmet financial need continues to substantially rise. For the average Pell Grant recipient in 2019-20 (the latest year with complete data), the report found that just 24 percent of public four-year colleges and universities were affordable and only 40 percent of public two-year community colleges were affordable. It also found that the average affordability gap, or amount of unmet financial need, at four-year institutions was $2,627 and the average affordability gap at two-year institutions was $907. NCAN said that these findings sound the alarm about the availability of affordable public postsecondary options nationwide, and more generally underscore the persistent challenges that students face affording college.

For further coverage, see this article from ***Higher Ed Dive***.

## NASFAA Releases Case Studies on How Changes to FAFSA Will Impact Student Aid Eligibility

On Tuesday, the National Association of Student Financial Aid Administrators (NASFAA) released a **white paper** that includes seven case studies that show how new changes to the Free Application for Federal Student Aid (FAFSA) will affect student aid eligibility. As stipulated in the *FAFSA Simplification Act*, the U.S. Department of Education is required to release a new version of the FAFSA for the 2024-2025 academic year. The new application will no longer utilize the concept of expected family contribution (EFC), instead assigning aid through a new statutorily required student aid index (SAI). The white paper released by NASFAA includes hypothetical scenarios that include demographic information to explain to administrators the differences between how the SAI will affect aid allocations compared to EFC to help them understand how the changes may impact their institutions.

## Committee for Responsible Federal Budget Releases Fiscal Blueprint, Includes IDR Reform

Yesterday, the Committee for a Responsible Federal Budget (CRFB) released a **fiscal blueprint** that it says federal policymakers should follow to reduce the national debt – putting it on a sustainable long-term path - and control high inflation. CRFB states that, ideally, the nation's debt should be reduced to about 50 percent of Gross Domestic Product from its current level of 98 percent. But given political constraints of this move, the organization recommends stabilizing debt at current levels within the decade, which will require $7 trillion in savings. The CRFB plan includes roughly $1.5 trillion of health care savings, $1.0 trillion of income tax revenue increases, $1.5 trillion of discretionary spending savings, $500 billion of energy and infrastructure savings, $1 trillion from Social Security solvency measures, $500 billion of savings from other reforms, and $1 trillion of interest savings due to reduced borrowing. Of particular interest to NCHER members, the blueprint calls for reforms to the federal student loan program coupled with higher education financing, which the CRFB estimates will save $150 billion over the next decade. Specifically, the blueprint recommends "replacing President Biden's proposed Income-Driven Repayment (IDR) changes with a new consolidated IDR program that better supports low-income undergraduate borrowers while avoiding windfall benefits to those with graduate degrees, and adopting a series of additional reforms to streamline subsidies, prevent excessive borrowing, and improve college accountability."

## U.S. Department of Education News

For today's *Federal Register*, click **here**.
The following announcements were posted to Federal Student Aid's Knowledge Works website:

- **(GEN-22-14) Cash Management – Tier One and Tier Two Arrangements**
- **(COD-22-07) 2023–2024 COD Technical Reference (Initial) Now Available**
- **(GENERAL-22-78) Extension of Audit Due Date for Proprietary Institutions Affected by Hurricanes**

- (APP-22-22) Issue Changing Homeless or at Risk of Being Homeless Answer to "No" on fafsa.gov
- (GENERAL-22-77) Active Confirmation of TG Numbers (SAIG Mailboxes) and Electronic Services User Accounts Required by Dec. 14, 2022 to Maintain Access to Federal Student Aid Systems
- (LOANS-22-10) HEAL Program Information – Maximum HEAL Program Interest Rates for Quarter Ending Dec. 31, 2022
- Final, Correction: Federal Student Loan Programs and Student Assistance General Provisions
- Comment Request: Federal Student Loan Debt Relief Application and Verification Forms Request
- Comment Request: Application To Participate in Federal Student Financial Aid Programs (PEPS)

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## General News

*The Hill* reports that Senate races across the country are tightening in a frenzied battle for who will control the chamber in January.

*CNN* provides a fact sheet over the false claim by President Joe Biden that he got a federal student loan forgiveness passed by Congress.

*The Hill* reports that the political and legal battle is heating up over the White House's federal student loan forgiveness plan and it will continue to do so, especially if Republicans pick up the majority in the U.S. House of Representatives as they may have standing to challenge the plan in court.

*Vox* publishes a column claiming that the President's federal student loan forgiveness plan is in grave danger from the federal judiciary, many of whom were appointed by Republicans.

*Forbes* reports that inflation, abortion, and college costs are among the top concerns from college students for the midterm elections that will be held in two weeks.

Yahoo Finance reports that the Biden Administration could have a 'Plan B' if its federal student loan forgiveness plan stalls in court – simply extend the payment and collection pause past December 31st.

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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