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## In Today's Edition

- Supreme Court Hears Oral Arguments in Case Challenging Federal Student Loan Forgiveness Program
- House Education and the Workforce Committee Chair Foxx Sends Letter to Education Secretary Cardona on Final Cost Estimates of Federal Student Loan Forgiveness Plan
- Department of Education Announces Delay in Third Party Servicer Guidance Effective Date, Extends Comment Period
- For-Profit Schools Sue to Block Department of Education's New Borrower Defense to Repayment Rules
- NASFAA Releases New Survey Highlighting Barriers to FAFSA Simplification
- U.S. Department of Education News
- General News

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## Supreme Court Hears Oral Arguments in Case Challenging Federal Student Loan Forgiveness Program

Today, the U.S. Supreme Court heard oral arguments in *Biden v. Nebraska* and *Department of Education v. Brown*, two cases brought by six states and two individual borrowers against the U.S. Department of Education's federal student loan forgiveness plan. During questioning, several conservative justices - Chief Justice John Roberts, Justice Samuel Alito, Justice Clarence Thomas, and Justice Neil Gorsuch - expressed

skepticism about the Biden Administration's authority to cancel federal student loans because of the pandemic, though other justices – namely Justice Brett Kavanaugh and Justice Amy Coney Barrett - expressed doubt that the parties had standing to bring the case. The court's liberal justices – Justice Sonia Sotomayer, Justice Elena Kagan, and Justice Ketanji Brown Jackson – appeared inclined to reject challenges to the program.

At the beginning of the day, Solicitor General Elizabeth Preloger defended the administration's use of the HEROES Act to carry out a widescale federal loan forgiveness plan saying that the plain reading of the statute gives the Secretary of Education the authority to carry out such a plan to assist struggling borrowers impacted by the COVID-19 pandemic. Following her brief remarks, Chief Justice Roberts and Justice Thomas took issue with the policy and specifically the Department's argument that debt cancellation was a legal "modification" of loan programs. Chief Justice Roberts expressed the most concern saying that, "It might be good English to say that the French Revolution modified the status of the French nobility, but only because there's a figure of speech called understatement and a literary device known as sarcasm." The Chief Justice also repeatedly criticized the plan, invoking its overall cost and raising questions over fairness. "We're talking about half a trillion dollars and 43 million Americans," Chief Justice Roberts said, questioning why the court would not expect Congress to authorize the massive program.

Several of the justices, including the Chief Justice, discussed the application of the "major questions doctrine," a legal theory that says Congress should be expected to speak with specificity when it gives an agency power to do something of great political or economic significance. Solicitor General Preloger said that the new forgiveness program did not meet the threshold as it was an economic benefit not regulatory action, while Nebraska Solicitor General James Campbell argued that the program should be struck down as a clear example of executive overreach and a violation of the separation of powers.

The Chief Justice also said the Department's decision not to wait on Congress to pass legislation may have cut short debates on whether student loan recipients were getting special treatment that people who paid off their loans or chose not to attend college did not. "Nobody's telling the person who was trying to set up the lawn service business that he doesn't have to pay his loan," the Chief Justice said. "He still does, even though his tax dollars are going to support the forgiveness of a loan for the college graduate who's not going to make a lot more than him over the course of his lifetime." Justice Alito also raised concerns with perceptions of unfairness. "Why is it fair? Why is it fair? Why was it done?"

he asked Solicitor General Prelogar.

Justice Kagan, however, seemed convinced that the HEROES Act provided the administration with the power to cancel federal student loan debt and, in response to the Chief Justice's remarks, said that Congress had used its voice. "All this business about executive power, I mean, we worry about executive power when Congress hasn't authorized the use of executive power," she said. "Here, Congress has authorized the use of executive power in an emergency situation. Congress doesn't get much clearer than that. We deal with congressional statutes every day that are really confusing. This one is not."

Both Justice Kavanaugh and Justice Barrett were less clear in their views. Notably, Justice Barrett (as well as Justice Jackson) questioned whether the states had standing to bring the lawsuit. She asked Solicitor General Campbell to describe the relationship between the State of Missouri and MOHELA and why MOHELA was not a party to the suit. Justice Kavanaugh said that the language in the HEROES Act allowing the Secretary of Education to waive many of the requirements of the federal student loan program was "extremely broad." But he seemed to oppose allowing an administration to use the emergency authority in the HEROES Act, which he said was passed two decades ago, to uphold a program giving relief to 95 percent of borrowers.

Justice Sotomayor acknowledged the overall cost of the program, saying that it was unsurprising given the scope of the federal student loan programs and the impact of the pandemic. She noted that the federal student loan payment pause that began in March 2020 costs about \$5 billion per month. But she said all the talk of the cost was irrelevant to the legal questions involved. "It's an outrageous sum," Justice Sotomayor acknowledged. "It's not a question of money. It's a question of Congress' intent."

Later in the day, the court turned its attention to the second challenge filed by two borrowers with federal student loans who complain that they were excluded in whole or in part from the program because it does not extend to those with Federal Family Education Loans and because of limits on the plan's benefits for those who did not receive Pell Grants. During those proceedings, the conservative justices, including Justice Gorsuch, asked the Solicitor General to detail how the program was fair to non-borrowers, different borrowers, or borrowers who had already paid off their loans. Justice Sotomayor said she was concerned about the borrowers who would be forced to default on their loans without the relief. "There's 50 million students who will benefit from this who today will struggle," she said. "Many of them don't have assets sufficient to

bail them out after the pandemic. They don't have friends or families or others who can help them make these payments. Those debtors will suffer in ways others won't because of the pandemic.”

With the completion of the oral arguments, Chief Justice Roberts announced that the case has been submitted for consideration. It is likely that a ruling will be released sometime in June.

For further coverage, see the following articles:

[Supreme Court's conservatives cast doubt on student loan forgiveness program | The Hill](#)

['Massive new program': Supreme Court majority signals skepticism over Biden's student loan forgiveness plan - USA Today](#)

[Supreme Court seems ready to sink student loan forgiveness - Associated Press](#)

[Biden's Student Loan Forgiveness Plan Might Be In Trouble Following Supreme Court Hearing - Forbes](#)

[Chief Justice Roberts has questions on student-loan cancellation: 'How does that fit under the normal understanding of modify?' - Market Watch](#)

## House Education and the Workforce Committee Chair Foxx Sends Letter to Education Secretary Cardona on Final Cost Estimates of Federal Student Loan Forgiveness Plan

Yesterday, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Rep. Lloyd Smucker (R-PA) sent a [letter](#) to Education Secretary Miguel Cardona expressing concern about the Department's development of its final cost estimates for the new federal student loan forgiveness program. In the letter, Chairwoman Foxx and Rep. Smucker express their grave concerns about the failure of the Department of Education to provide sufficient evidence to its independent auditor, KPMG LLP, to form an audit opinion on the Department's consolidated financial statements for Fiscal Year 2022. The members say that this is yet another example of the Biden Administration's lack of transparency when it comes to wasteful spending of taxpayer dollars. “Your Department's ‘evidence’ underlying the cost estimates for its

massive student loan debt relief plan fell woefully short of common auditing standards,” the letter states. “As KPMG’s Disclaimer of Opinion notes, the Department’s internal controls ‘were not properly designed...to address the relevance and reliability of the...data used to develop the [loan] take-up rate assumption used in the various loan program estimates.’ The loopholes in the Department’s responses, as well as their vagueness, raise substantial questions about the Department’s intentions. Given your Department’s track record of hiding the costs of the Direct Loan and Federal Family Education Loan programs, we are greatly concerned about the lack of a sufficient evidentiary basis for the cost estimates of the President’s illegal debt relief plan.” Chairwoman Foxx and Rep. Smucker said that the Biden Administration is attempting to cover-up the real cost of the federal loan forgiveness program, and requests documents from the Department on the final cost estimates.

## Department of Education Announces Delay in Third Party Servicer Guidance Effective Date, Extends Comment Period

This morning, the U.S. Department of Education’s Office of Federal Student Aid (FSA) [announced](#) that it would extend the public comment period for the recently issued Dear Colleague Letter revising third-party servicer requirements, establish a future effective date for the guidance, and extend the reporting deadline for institutions of higher education and third-party servicers. Previously, the Department had published the guidance and asked that public comments be submitted no later than March 17, 2023. In today’s update, the Department wrote, “an earlier version of this letter invited the community to submit comments on the guidance in this letter so that we would have an opportunity to hear from the field about areas that are unclear or could be improved. We recognize that this has created some uncertainty around exactly what requirements and reporting deadlines will apply. Therefore, as noted above, we are adjusting the effective date of the guidance to September 1, 2023.” With the update, all interested parties are now invited to submit comments on or before 30 days from today.

## For-Profit Schools Sue to Block Department of Education’s New Borrower Defense to Repayment Rules

Career Colleges and Schools of Texas, a trade group representing for-profit institutions of higher education in the state, announced that it intends to file a suit against the U.S. Department of Education over its borrower defense to repayment rule. The group alleges that the new rule, which includes a rewrite of the federal standards that govern when the

Department discharges a federal student loan based on a college's misconduct, is meant to provide "massive loan forgiveness for borrows and to reallocate the correspondingly massive financial liability to institutions of higher education." The current regulations are set to take effect on July 1, 2023, but the lawsuit will ask the U.S. District Court for the Northern District of Texas to stop the rules from taking effect arguing that they are unconstitutional and illegal. Career Education Colleges and Universities (CECU) President and Chief Executive Officer Jason Altmire said that his organization supports the lawsuit. "CECU has led the sector's response to these unlawful regulations because they irrationally expand the potential acts and omissions of schools that give rise to a borrower defense to loan repayment, while eliminating the procedural protections necessary to protect schools against erroneous loan discharges and presumptions of liability," Mr. Altmire said.

For additional coverage, see this article from [Higher Ed Dive](#).

## NASFAA Releases New Survey Highlighting Barriers to FAFSA Simplification

On Monday, the National Association of Student Financial Aid Administration released a new [study](#) highlighting the barriers that may arise related to simplification of the FAFSA [Free Application for Federal Student Aid]. As previously reported, the U.S. Department of Education has announced that a simplified version of the FAFSA will go live sometime this fall as one of many changes the agency is making as a part of implementation of the FAFSA Simplification Act. The survey found that financial aid administrators at colleges and universities say a lack of time and guidance from the Department are key barriers that they will face in preparing to carry out the coming overhaul of the FAFSA. Specifically, the survey found that about 59 percent of financial aid officers said they were somewhat on track in terms of their level of preparedness for FAFSA simplification, about 28 percent said they were mostly or completely on track, and 10 percent said they were not on track at all. Survey respondents cited staffing shortages in financial aid offices as factors that will hinder implementation efforts, and many reported they were not confident that student information system providers will be ready for the expected changes. Earlier this month, Department officials refused to confirm that the simplified FAFSA would be ready by October 1—the launch date for the FAFSA since 2016.

For additional coverage, see this article from [Inside Higher Ed](#).

## U.S. Department of Education News

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

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

- [Comment Request: Prison Education Program Application](#)
- [\(LOANS-23-03\) FY 2020 Draft Cohort Default Rates Distributed Feb. 27, 2023](#)
- [\(GRANTS-23-02\) First Pell Grant Administrative Cost Allowance Payments for 2022-23 Award Year](#)

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## General News

[The Hill](#) asks when student and parent borrowers can expect the current federal student loan payment pause to end.

[Higher Ed Dive](#) reports that a federal judge recently cleared the path for most borrower defense to repayment claims under the Sweet v. Cardona settlement to move forward.

[The Chronicle of Higher Education](#) reports that colleges and universities are fearful that the cost of doing business will become much costlier.

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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National Council of Higher Education Resources

1050 Connecticut Ave NW #65793

Washington, DC 20035

Phone: **(202) 822-2106**

Fax: (202) 822-2142

