



DAILY BRIEFING

Thursday, September 29, 2022

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FSA Updates FAQs on Federal Student Loan Forgiveness, Restricts Eligibility for FFELP Borrowers

On Wednesday night, the U.S. Department of Education’s Office of Federal Student Aid (FSA) published an update to its [Frequently Asked Questions \(FAQs\)](#) on the Biden Administration’s federal student loan forgiveness to address whether borrowers with

loans under the Federal Family Education Loan Program (FFELP) or Perkins Loans are eligible for debt relief. The following is the updated question:

Are Federal Family Education Loan (FFEL) Program loans or Perkins Loans eligible for debt relief?

All loans eligible for the student loan payment pause are also eligible for relief, including loans held by ED and guaranty agencies.

*As of Sept. 29, 2022, borrowers with federal student loans not held by ED **cannot** obtain one-time debt relief by consolidating those loans into Direct Loans.*

Borrowers with FFEL Program loans and Perkins Loans not held by ED who have applied to consolidate into the Direct Loan program prior to Sept. 29, 2022, are eligible for one-time debt relief through the Direct Loan program.

ED is assessing whether there are alternative pathways to provide relief to borrowers with federal student loans not held by ED, including FFEL Program loans and Perkins Loans, and is discussing this with private lenders.

Politico reports that the Biden Administration sees FFELP lenders and other entities as presenting the greatest legal threat to the federal student loan forgiveness plan. The lenders face losses as borrowers are encouraged to consolidate into the Direct Loan program, and could be a party to future litigation. The FAQs make clear that borrowers who already took those steps to receive loan forgiveness would still receive it, but that path is no longer available to borrowers after the new guidance. "Our goal is to provide relief to as many eligible borrowers as quickly and easily as possible, and this will allow us to achieve that goal while we continue to explore additional legally-available options to provide relief to borrowers with privately owned FFEL loans and Perkins loans, including whether FFEL borrowers could receive one-time debt relief without needing to consolidate," a Department spokesperson said in a statement. ⁷

For more coverage, see these articles from [Politico](#) and [NPR](#).

**Federal Judge Holds Hearing on “Garrison v. Cardona”
Challenge to Federal Student Loan Forgiveness Plan**

This morning, the U.S. District Court for the Southern District of Indiana held a hearing in the [Garrison v. Cardona](#) lawsuit filed by Pacific Legal Foundation challenging the U.S. Department of Education's plan for federal student loan forgiveness. According to the lawsuit, Frank Garrison, an attorney at the foundation, is suing to block the loan forgiveness plan arguing that he will face a state tax bill on \$20,000 in debt relief he expects to automatically receive. Mr. Garrison argues that he will not face this tax if he continues with his plan for forgiveness under the Public Service Loan Forgiveness program. The hearing was held by telephone and closed to the public. There is no further information or determination when the judge in the case will make a ruling. Mr. Garrison had asked the judge to decide his request for an immediate order blocking the relief plan by today.

For more coverage of the Department's effort to nullify the *Garrison* challenge, such as announcing that borrowers who do not want their student loans forgiven can opt out of the plan, see this article from [Bloomberg](#).

Six States File Suit Against Biden Administration's Federal Student Loan Forgiveness Plan

Today, six states, including Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina, filed a [lawsuit](#) in the U.S. District Court for the Eastern District of Missouri, Eastern Division, asking the court to declare that the Biden Administration's federal student loan forgiveness program (which it refers to as "Mass Debt Cancellation") violates the U.S. Constitution's separation of powers, violates the Administrative Procedures Act, and is arbitrary, capricious, and an abuse of discretion. The states argue that the U.S. Department of Education be temporarily restrained and preliminarily and permanently enjoined from implementing the new program. In a statement, Arkansas Attorney General Leslie Rutledge, who is leading the group of six said, "The Department of Education is required, under the law, to collect the balance due on loans. And President Biden does not have the authority to override that."

The complaint alleges that, "No statute permits President Biden to unilaterally relieve millions of individuals from their obligation to pay loans they voluntarily assumed," which represents a violation of the major-question doctrine recently endorsed by the U.S. Supreme Court. Referring to the HEROES Act of 2003, the claimed authority for the Department's action announced on August 24th, the complaint states that "it is inconceivable, when it passed the HEROES Act, that Congress thought it was authorizing

anything like the Administration's across-the-board debt cancellation, which will result in around half a trillion dollars or more in losses to the federal treasury." The suit also claims that the proposed plan does not even attempt to meet the requirements of the HEROES Act. It cites an opinion from the U.S. Department of Justice's Office of Legal Counsel, which concluded that any loan forgiveness under the HEROES Act must be: (1) structured to put loan recipients back into the financial position they would be in were it not for the national emergency and (2) limited only to the harm that has a relation to the borrower's federal loans. The complaint alleges that the Biden Administration has neither made a determination that the pandemic was the cause of any financial harm addressed by loan forgiveness nor made a determination that the cancellation plan will put borrowers back in the financial position they would have been in if not for the COVID-19 pandemic. The complaint claims that the proposed plan harms the financial and proprietary interests of Missouri and Arkansas, in part through the consolidation of Federal Family Education Loan Program loans into the Direct Loan Program, and harms the sovereign and quasi-sovereign interests of all the plaintiff states.

For further coverage, see this article from [Associated Press](#).

Public Service Loan Forgiveness Coalition Sends Letter to President to Extend PSLF Waiver

The Public Service Loan Forgiveness Coalition recently wrote a [letter](#) to President Joe Biden asking him to extend the time-limited waiver for Public Service Loan Forgiveness (PSLF) through July 2023. Currently, the waiver is set to expire on October 31, 2022, but the letter argues there are still borrowers who are unaware of it. The letter explains that the request for an extension would allow more time to raise public awareness and increase accessibility to the waiver. It argues that only a fraction of public servants who are eligible for the waiver are currently in the pipeline for forgiveness. The letter requests that the waiver be extended until next summer which is the effective date for revisions made to PSLF that are being proposed through the regulatory process.

Senate Passes Short-Term Continuing Resolution to Extend Federal Funding Past Weekend

This afternoon, the U.S. Senate passed [H.R. 6833, the Continuing Resolution \(CR\)](#) that

would extend funding for the federal government past the start of the fiscal year. Federal funding runs out on Friday at midnight and the CR must be passed before then to avoid a government shutdown. The bill passed by a vote of 72-25 and now heads to the U.S. House of Representatives for further consideration, potentially as early as tonight.

As previously reported, the bill extends funding until December 16, punting the negotiations between House and Senate Democrats and Republicans on funding levels until after the midterm elections. In its current form, the CR also includes \$12.3 billion in aid for Ukraine and \$20 million to address the water crisis in Jackson, Mississippi, but no additional aid to combat COVID-19 or monkeypox. It is the last major to-do item before the House and Senate head home for the mid-term elections.

CFPB Releases Supervisory Examinations Find Violations of Federal Law by Student Loan Servicers and University-Owned Lenders

Today, the Consumer Financial Protection Bureau (CFPB) released a special edition of [Supervisory Highlights](#), which includes examination findings regarding practices of institutions of higher education that lend to students directly and loan servicers. The report stated that the examinations found schools had improper policies allowing them to withhold students' transcripts to force their students to make payments. The examinations also found many cases where federal loan servicers improperly denied borrower applications for loan cancellation through Teacher Loan Forgiveness or Public Service Loan Forgiveness, and misrepresented borrowers' eligibility dates and the number of payments the borrower needed to make to qualify for relief. The servicers also provided misinformation about borrowers' entitlement to progress toward loan forgiveness during the pandemic payment suspension. The CFPB directed servicers to address consumer harm caused by these actions, and said that it will continue to monitor practices to ensure that student loan borrowers are not illegally excluded from relief provided for them under federal law.

Bill and Melinda Gates Study Examines Decline in College Enrollment

The Bill and Melinda Gates Foundation recently released a new [study](#) that found enrollment in higher education is declining. The study drew responses from 11 focus groups and an online survey of 1,675 people between the ages of 18 and 30 who decided not to go to college or stopped out of college. The study aimed to find answers to why college enrollment is dropping and what other options people are choosing instead. According to the study, when respondents were asked about their future plans regarding college, 46 percent indicated they definitely plan on going/returning, 41 percent are unsure, and 13 percent do not plan on going/returning. The study found that the cost of college is still one of the primary barriers to obtaining a degree; however, respondents also cited reasons such as too much pressure, the need to get a job to make money, and uncertainty about their future career as reasons for pathways besides college. The study broke down the findings from respondents into four main categories based on their reasons for not attending college: 35 percent of would-be-students want more guidance on how to get the most value out of a college program, 29 percent are content with their current circumstances and worry about the cost of college, 18 percent are deterred by anxieties and would benefit from a range of supports, and 19 percent do not see college as the right place for them. The study found that one of the main takeaways was that higher education institutions need to clearly communicate that the skills learned in their programs will be easily transferable into the workforce.

U.S. Department of Education News

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

The following announcement was posted to Federal Student Aid's Knowledge Works website:

- [\(LOANS-22-08\) FY 2019 Official Cohort Default Rates Distributed Sept. 29–30, 2022](#)
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General News

[Forbes](#) reports that Congressional Republicans have vowed to block the White House's federal student loan forgiveness plan, claiming that the burden of paying for the plan will fall on taxpayers.

[CNN](#) reports that the Biden Administration is starting the process of forgiving federal

student loan debt by sending email updates on the process before the window to apply opens next month.

[Fox Business](#) highlights strategies and tips for student and parent borrowers carrying high amounts of student loan debt.

[Housing Wire](#) reports on the effects that federal student loan forgiveness can have on making home ownership more accessible for millions of Americans.

[CBS News](#) reports that Sen. Elizabeth Warren (D-MA) plans to reintroduce a bill this week that would overhaul U.S. bankruptcy rules and create another path for Americans to erase their student loan debt.

[The Hill](#) has an op-ed from Rep. Mike Kelly (R-PA) who argues that the President's federal student loan forgiveness plan is clearly unconstitutional.

[Inside Higher Ed](#) reports, after a series of focus group discussions with community colleges in Texas, they found that there are significant barriers to persistence.

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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