



# DAILY BRIEFING

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Monday, October 31, 2022

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## NCHER Daily Briefing Publishing on Abbreviated Schedule

The *NCHER Daily Briefing* will publish on an abbreviated schedule consisting of today and Thursday while Congress remains in recess. Both chambers are expected to return to legislative business after the November election.



## Weekly Rundown

The NCHER Weekly Rundown, which includes the latest information on important events in Washington, DC, is available today and can be downloaded from the [NCHER website](#).

## Department of Education Releases Final Regulations on Borrower Defense to Repayment, PSLF, Loan Discharge, and Interest Capitalization

Today, the U.S. Department of Education [announced](#) final regulations implementing changes to its process for approving borrower defense to repayment claims, the Public Service Loan Forgiveness Program (PSLF), total and permanent disability and false certification discharges, and interest capitalization. The final rules, which will go into effect on July 1, 2023, including the following:

Borrower Defense to Repayment: The final rules set standards and requirements for what borrowers must show to provide that a federal student loan was given under deceptive terms and can be discharged by the Secretary of Education. To approve a claim, the Department must conclude that a preponderance of the evidence shows substantial misrepresentation, substantial omission of fact, breach of contract, aggressive and deceptive recruitment, or sanctions stemming from agency judgments and final secretarial actions. The final rules allow the Department to initiate defense claim reviews for groups of borrowers and allows third parties such as states, attorneys general, or nonprofit legal assistance organizations to request group reviews from the agency. For loans issued prior to July 1, 2023, the Department said it can go after colleges and universities to repay the cost of approved borrower defense claims if those claims would have been approved under standards in place at the time the loan was issued. Borrowers can file to have their denied claims reconsidered if they have new evidence or raise an administrative or technical error.

Public Service Loan Forgiveness: The final rules would allow borrowers to receive credit for PSLF even if payments were made late, in installments or in a lump sum. The rules would also allow periods of payment deferment or forbearance to count toward PSLF in instances such as deferred payments for cancer treatment or military service. The changes also give borrowers who consolidated their Direct Loans a weighted average of PSLF payments.

Total and permanent disability: The final rules allow borrowers to have their loans discharged based on disability determination made by the Social Security Administration (SSA) or if they match the criteria for "Medical Improvement Possible" or "Compassionate Allowances." They are also eligible if they have an established onset date of at least five

years ago. The rules also allow borrowers who do not qualify under SSA to submit documentation signed by medical professionals. Previously, only borrowers who were categorized as "Medical Improvement Not Expected" were eligible for discharge.

False certification: The final rules expand the type of documentation needed for discharge and clarifies applicable dates. The changes also allow group false certification to similarly affected borrowers.

Interest capitalization: The final rules eliminate interest capitalization on Direct Loans where borrowers have outstanding unpaid interest added to their principal student loan balance, unless it is required by statute. This includes when borrowers in the Pay As You Earn repayment program no longer have partial financial hardships and when borrowers leave Revised Pay As You Earn plans.

Closed school discharges: The final rules expand the number of borrowers who can receive an automatic discharge if their school closes. Borrowers are still eligible for relief if their school closed and they did not finish their program or left the school within 180 days of its closure.

Arbitration and class-action lawsuits: The final rules prohibit colleges and universities from requiring borrowers to sign onto pre-dispute arbitration agreements or requiring them to waive their participation in borrower defense class-action lawsuits. Schools also cannot compel students to use internal dispute resolution procedures before contacting accreditors or the federal government about their complaint.

As expected, Education Secretary Miguel Cardona praised the changes as major steps that streamline a complicated system, while also prohibiting mandatory arbitration agreements and limiting the practice of attaching unpaid student loan interest onto borrowers' principal balances. But propriety schools blasted the final rules, saying the Department did not take enough time to meaningfully consider the industry's concerns. "The Department has cut corners in a rush to ram through a punitive borrower defense rule with serious legal and regulatory flaws that could undermine the American education system," said Jason Altmire, President and Chief Executive Officer of Career Education Colleges and Universities, in a statement. "This is yet another example of the Department's willingness to disregard established process to pursue a partisan borrower defense agenda that is contrary to the best interests of schools and students."

For a fact sheet on the rule package, click [here](#). For a pre-publication copy of the

regulations that will be published in Tuesday's Federal Register, click [here](#). For further news coverage, see this article from [The New York Times](#).

## Department of Education's Office of Inspector General Releases Warning on Student Loan Forgiveness Scams

The U.S. Department of Education's Office of Inspector General (IG) recently released an [announcement](#) warning student and parent borrowers about scams related to the new federal student loan forgiveness program. As part of the warning, the IG recommended that borrowers beware of phone calls, emails, and texts from anyone claiming they can help borrowers obtain student loan forgiveness or help borrowers consolidate or refinance their loans for a fee. "Dishonest companies, fraudsters, and cyber criminals are targeting student loan borrowers," the announcement said. "They're sending unsolicited texts, emails, or calls with promises to help you obtain student loan forgiveness, reduce your student loan debt, consolidate your student loans, or eliminate your student loans completely. You may also see their ads pop up on social media. Don't fall for it – these are likely scammers coming after your money, your personal information, or both."

## 7th Circuit Declines Request to Block Federal Student Loan Forgiveness Program

Recently, the U.S. Court of Appeals for the Seventh Circuit issued an opinion declining an emergency request from Frank Garrison to block the White House's federal student loan forgiveness program. In the motion, the plaintiff claims that the debt relief program would leave him worse off because Indiana treats cancellation of debt as a form of income, which is subject to tax. As previously reported, in early October, the U.S. District Court for the Southern District of Indiana issued a similar [order](#) denying motions for a temporary restraining order and preliminary injunction in *Garrison v. U.S. Department of Education*, citing the Department's change in the plan that gives borrowers an opt out right.

## Education Reform Now Releases Research Criticizing Use of Legacy Admissions

Education Reform Now recently released a new [report](#) that attempts to quantify the effects of legacy admissions at colleges and universities. The report found that the

children of alumni have a significant advantage in the admissions process at colleges with legacy preferences. "At Harvard, legacy applicants with the highest academic ratings were more than twice as likely to be admitted than applicants who have equally high academic ratings but come from households with incomes below \$60,000," the report said. The report says that, if the U.S. Supreme Court bans the consideration of race in college admissions and colleges do not end the use of legacy preferences, enrollment gaps between students of color and white students will widen further.

## U.S. Department of Education News

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

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## General News

[CNN](#) reports that, today, the U.S. Supreme Court is hearing a case that could eliminate affirmative action in college admissions.

[Forbes](#) reports that President Joe Biden made a bold projection over the weekend – that borrowers will begin to receive student loan forgiveness under his initiative within two weeks.

[USA Today](#) reports that federal student loan borrowers need to plan ahead as payments are slated to restart in January.

[Fox Business](#) reports that student loan refinance interest rates recently edged up for both five- and ten-year loans.

[The Chronicle of Higher Education](#) reports on a new lawsuit filed against a prominent higher education consultant who is alleged to have committed financial fraud.

[The Hill](#) reports that the University of Florida's faculty recently passed a vote of no confidence over the selection of Sen. Ben Sasse (R-NE) as the next president of the university.

[Roll Call](#) reports that a recent court decision may force the U.S. Supreme Court to take another look at the funding structure for the Consumer Financial Protection Bureau.

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