



# DAILY BRIEFING

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## DOJ Says It Will Ask Supreme Court to Reverse Injunction on Implementing Federal Student Loan Forgiveness Plan

Today, the U.S. Department of Justice (DOJ) said that it will file a request with the U.S. Supreme Court asking it to allow the U.S. Department of Education to move forward with implementing its federal student loan forgiveness plan. In a court filing, DOJ said that it would seek to reverse an emergency injunction issued by the U.S. Court of Appeals for the Eighth Circuit that has upended its plan to forgive up to \$20,000 of student loan debt for tens of millions of Americans. Separately, DOJ said that it would ask the U.S. Court of Appeals for the Fifth Circuit to put a hold on a ruling by U.S. District Judge for the Northern District of Texas Mark Pittman that found its loan forgiveness scheme unconstitutional. DOJ asked for a ruling from the appeals court by December 1st “to allow the government to seek relief from the Supreme Court” if needed. News reports say that the various emergency requests by the Biden Administration tee up what could be the most consequential showdown at the Supreme Court yet over the White House’s debt relief policy in the coming weeks. On two separate occasions, Supreme Court Justice Amy Coney Barrett rejected preliminary requests in other lawsuits to block the program. But neither case had addressed the legal merits of the program.

## U.S. House of Representatives Officially Called for Republicans, Increased Scrutiny of President’s Education Agenda Among Top Priorities

Yesterday, Rep. Mark Garcia (R-CA) won California’s 27th Congressional District, giving Republicans the majority in the U.S. House of Representatives. Six races are still left to be called but, whatever happens with the remaining races, Republicans are expected to have a slim majority of roughly two to four seats.

According to *Politico*, the Republican takeover of the House will torpedo what is left of President Joe Biden’s education agenda and squeeze Democrats on several difficult topics. The President’s proposals for free college and a doubling the Pell Grant, which were tabled when the Build Back Better Act collapsed in the Senate, will likely remain on the sidelines for at least the next two years. The shift in power in the House will also bring heightened scrutiny to the U.S. Department of Education’s federal student loan forgiveness plan and ways that institutions of higher education have spent COVID-19 funds.

While the conservative education agenda is unlikely to get passed in a Democrat-led

Senate, a Republican-led House is primed to amplify and define key issues going into 2024. “Winning back the majority in the House gives our oversight efforts teeth,” Rep. Virginia Foxx (R-NC), the top Republican on the House Education and Labor Committee, said in a statement. “We will have more tools at our disposal to ensure the Department of Education is executing programs within the law and according to the intent of Congress. This includes resisting the Biden administration’s blanket student loan bailout and radical changes to student loan programs.” Rep. Foxx, who is vying to lead the House Education and Labor Committee next Congress, said Republicans will present legislation that combats the “high cost of college and holds colleges accountable for poor outcomes.” She also promised to increase oversight on how COVID relief funds are used to address learning loss, protect parental rights in K-12 education, and fight to expand school choice. House Minority Leader Kevin McCarthy (R-CA), who is expected to become Speaker of the House, must decide if he will grant a waiver request from Rep. Foxx to wield the gavel again because of Republican term limits. Some Republicans are signaling support for Rep. Tim Walberg (R-MI) to lead the committee.

For additional coverage, see these articles from [Roll Call](#) and [Politico](#).

## House Speaker Pelosi and House Majority Leader Hoyer Announce They Will Not Run for Leadership in New Congress

Today, House Speaker Nancy Pelosi (D-CA) and House Majority Leader Steny Hoyer (D-MD) announced that they would not seek reelection to lead House Democrats in the new Congress that starts in January. Both Speaker Pelosi and Leader Hoyer, who served as the number 1 and number 2 Democratic leader for more than 20 years, also announced that they would retain their seats in the U.S. House of Representatives. In a speech on the House floor, Speaker Pelosi said “with great confidence in our caucus, I will not seek reelection to Democratic leadership in the next Congress. For me the hour has come for a new generation to lead the Democratic caucus that I so deeply respect. I'm grateful that so many are ready and willing to shoulder this awesome responsibility.” In his remarks on the House floor, Leader Hoyer stated, “now is the time for a new generation of leaders.” House Democrats will hold leadership elections at the end of this month and today’s announcements are expected to spark multiple leadership bid announcements over the next few days. House Majority Whip James Clyburn (D-SC) indicated that he would like to stay in leadership as the Assistant Democratic Leader, a position that was created for him when Democrats were last in the minority. This clears the way for Rep. Hakeem Jeffries

(D-NY), Rep. Katherine Clark (D-MA) and Rep. Paul Aguilar (D-CA) to seek the top three leadership posts for House Democrats in the new Congress.

For further coverage, see these articles from [Roll Call](#) and [The Hill](#).

## Department of Justice Issues New Guidance on Discharging Student Loans in Bankruptcy

Today, the U.S. Department of Justice (DOJ) released [new guidance](#) to its attorneys that will limit the circumstances in which the federal government fights efforts by student and parent borrowers to have their federal student loans discharged in bankruptcy. The new policy essentially weakens how DOJ will interpret the “undue hardship” standard and creates a new process for borrowers to show that they are unable to repay their loans. DOJ said that it would recommend bankruptcy judges approve loan discharges in cases where a borrower has sought in good faith to repay their loans but “presently lacks an ability to repay the loan” and that situation is “likely to persist in the future.” But the policy change does not eliminate the “undue hardship” standard, which would require action by Congress.

“Today’s guidance outlines a better, fairer, more transparent process for student loan borrowers in bankruptcy,” Associate Attorney General Vanita Gupta said in a statement. “It will allow Justice Department attorneys to more easily identify cases in which we can recommend discharge of a borrower’s student loans.”

Press reports say that the new bankruptcy guidelines follow more than a year of discussions within the Biden Administration between the U.S. Department of Education and DOJ over how to overhaul its approach to student loans in bankruptcy. Over the last year, consumer groups have criticized the Biden Administration for continuing to oppose borrowers in court as they sought to discharge their debts in bankruptcy. The administration backed down from several individual cases in which it was appealing loan discharges that bankrupt borrowers had initially won from a judge. The policy change drew praise from Sen. Elizabeth Warren (D-MA), who has long pushed to overhaul the bankruptcy system and held up Education Under Secretary James Kvaal’s nomination to win promises that the Department would overhaul various federal student loan policies, including its approach to bankruptcy.

For further coverage, see these articles from [CNN](#), [Forbes](#), and [The Washington Post](#).

## House Republicans Send Letter to OMB Asking Questions on Federal Student Loan Forgiveness Plan

Today, House Education and Labor Committee Ranking Member (R-NC) and House Budget Committee Ranking Member Jason Smith (R-MO) sent a [letter](#) to the White House Office of Management and Budget (OMB) asking a series of questions over its federal student loan forgiveness plan, saying that it is a giveaway to the wealthy. The letter also ordered OMB to preserve all documents and correspondence related to the executive order announcing the plan in August 2022. In the letter, Ranking Member Foxx and Ranking Member Smith note that cost estimates of the President's executive action on federal student loans include \$400 billion for student loan cancellation, \$105 billion for the loan repayment moratorium, and \$450 billion for an expanded income-driven repayment plan. It says that the President's actions have shifted the debt burden from wealthy borrowers to working class families that would cost approximately \$2,500 per taxpayer.

The letter demands that OMB provide a full accounting of the President's federal student loan forgiveness plan, including the inflationary impact of the roughly \$1 trillion in new spending, the cost estimate of each facet of student loan cancellation, and which income groups benefit the most. The letter also asks the agency to furnish what arguments the White House and U.S. Department of Education relied upon to justify bypassing Congress through an executive order.

## Sen. Paul Announces for Senate Homeland Security Committee Ranking Member, Sen. Cassidy Set for Senate HELP Committee

This morning, Sen. Rand Paul (R-KY) announced in a [tweet](#) that he will seek the position of Ranking Member on the Senate Homeland Security and Governmental Affairs Committee. The announcement comes after months of speculation about whether he would lead Republicans on that committee or the Senate Health, Education, Labor, and Pensions (HELP) Committee due to the retirement of Sen. Richard Burr (R-NC). Sen. Paul's action leaves the top Republican spot on the Senate HELP Committee open. With Sen. Paul shifting to the Senate Homeland Security Committee and Sen. Susan Collins (R-

ME) likely taking the top spot on the Senate Appropriations Committee, the next most senior member in line to get the Republican leadership spot on the Senate HELP Committee is Sen. Bill Cassidy (R-LA). While Sen. Cassidy has not publicly declared for the Ranking Member spot, he has expressed an interest in it in media interviews. For further coverage, see this article from [The Hill](#).

## Sen. Murray Announces Bid for Senate Appropriations Committee Chair, Sen. Sanders Aims for Senate HELP Committee Chair

Yesterday, Senate Health, Education, Labor, and Pensions (HELP) Committee Chair Patty Murray (D-WA) announced that she will make a bid for the Chair of the Senate Appropriations Committee. “Next Congress, Senator Murray intends to pursue the Appropriations Committee gavel,” her office said. “As Chair, Senator Murray would continue to do what she has done her entire career: put working families and Washington state first.” If Sen. Murray is named to the position, she would become only the second woman in history to head the committee. With Sen. Murray’s announcement, Sen. Bernie Sanders (I-VT) is next in line to assume the chair of the Senate HELP Committee. In fact, earlier today, Sen. Sanders announced that he would seek the chair of the committee saying that he will focus on universal healthcare and “lowering the cost of prescription drugs.”

For further coverage, see this article from [The Hill](#).

## Federal Court Approves Sweet v. Cardona Settlement

On Wednesday, U.S. District Court for the Northern District of California Judge William Alsup issued a [decision in Sweet v. Cardona](#) granting final approval to the sweeping settlement that will automatically cancel federal student loan debt owned by over 200,000 borrowers who claimed to be defrauded by their colleges. In his decision, Judge Alsup ruled that the U.S. Department of Education has the power to discharge large amounts of federal student loan debt under the settlement, rejecting arguments by career colleges who said the settlement was illegal and unfair. Judge Alsup wrote that, “the borrower-defense program set up by Congress has devolved into an impossible quagmire,” adding that this “has been true across all administrations.” The settlement would help the Department clear a backlog of over 443,000 borrower defense claims. Under the settlement, the Department will discharge over \$6 billion owed to 200,00

borrowers who have pending claims against over 151 schools, most of which are for-profit colleges, where the agency has determined there is evidence of misconduct. Another group of 64,000 borrowers will have their claims fast-tracked based on the length of time they have been waiting for a decision. A third group of 179,000 borrowers who filed claims since June 22, 2022, will have their claims sent through a streamlined process. If the Department does not decide their claim within the next three years, they will receive full discharge of their loans. Jason Altmire, President and Chief Executive Officer of Career Education Colleges and Universities, said that his group will appeal the decision to the U.S. Court of Appeals for the Ninth Circuit. For further coverage, see this article from [Yahoo Finance](#).

## FLEC Holds Meeting, FSA COO Cordray Discusses Federal Student Loan Forgiveness and PSLF

This morning, the U.S. Department of Treasury's Financial Literacy and Education Commission (FLEC) held a public meeting where much of the focus was on digital assets and crypto assets. Both Nellie Liang, Under Secretary of Treasury for Domestic Finance, who chaired the meeting and Rohit Chopra, Consumer Financial Protection Bureau Director, who is the Vice Chair, devoted their opening remarks to crypto markets, including recent news of fraud and bankruptcies. Federal Student Aid (FSA) Chief Operating Officer Richard Cordray provided remarks where he said that student loan debt is crushing many borrowers and is why the Biden Administration announced a new federal student loan forgiveness plan. He said 26 million borrowers have applied for relief, but the program has been temporarily delayed by two court orders that the U.S. Department of Justice is appealing. In the meantime, he said that FSA has been focused on other initiatives including improving the Public Service Loan Forgiveness (PSLF) program. So far, 360,000 borrowers have received \$26 billion in loan forgiveness under the temporary PSLF waiver. While that program has expired, the U.S. Department of Education is making permanent changes to the program. He encouraged FLEC members to get the word out on PSLF, since many borrowers have not signed up. For a recording of the meeting, visit [Treasury's website](#).

## U.S. Department of Education News

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

The following announcement was posted to the Federal Student Aid's Knowledge Center Website:

- [\(GENERAL-22-88\) Resolving Payment Period Start Date and Payment Period End Date Reporting Issues](#)
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## Member News



AccessLex Institute launched a new [Student Loan Calculator](#) to help law students plan their financial future and calculate school costs.

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## General News

[USA Today](#) provide further coverage on a possible path forward for the White House's federal student loan forgiveness plan.

[CNBC](#) provides further coverage of the U.S. Department of Education's warning of "historically large increases" in student loan defaults without federal student loan forgiveness.

[The Chronicle of Higher Education](#) reports that Harvard University and Yale University will ditch the college rankings put out by *U.S. News and World Report* and speculates about whether other colleges and universities will follow.

[Inside Higher Education](#) reports that a new data tool aims to help campus leaders examine inequities on campus.

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