

WASHINGTON UPDATE

OCTOBER 2022

Biden Signs Bill Allowing Separation of Spousal Student Loans

On October 11, 2022, President Biden signed S. 1098, the *Joint Consolidation Loan Separation Act*, into law, which is aimed at fixing a loophole in the Federal Family Education Loan (FFEL) program that made student loans to married couples jointly. The *Higher Education Act* provided no mechanism for borrowers to subsequently separate their loans in cases of divorce or abusive relationships. Borrowers with joint consolidation loans under the FFEL program may now submit separate applications for new direct consolidation loans.

The bipartisan bill passed the Senate in June. The House passed the bill in September on a vote of 232-193 vote.

White House Releases Application for Federal Student Loan Forgiveness

On October 11, 2022, the White House released a preview of the application that borrowers will have to complete to receive federal student loan forgiveness that President Biden announced in August. The application is expected to go live later this month and will be a simple form that is hosted on a .gov website. The application will ask for basic information: name, social security number, date of birth, phone number, and email address. Borrowers will be required to attest to the income threshold by checking a box certifying to this “under penalty of perjury.”

A copy of the preview to the student loan debt relief application is found at:
<https://content.govdelivery.com/accounts/USED/bulletins/331e7da>.

White House Launches New, Coordinated Effort to Combat Scammers

On October 5, 2022, the White House announced that it is launching a new, coordinated effort to combat scammers who are taking advantage of the President’s federal student loan forgiveness plan by cheating Americans out of their money. According to a press release, over the last 18 months, the Federal Trade Commission (FTC) has reached almost \$30 million in settlements, including refunds for borrowers, who were illegally charged up front fees and falsely promised reduced or eliminated student loan payments.

The Department of Education also released “Student Debt Relief Do’s and Don’ts” to help borrowers avoid scams. The Department will provide regular complaint reports to states to help identify scammers. The White house will lead an all-of-government scam prevention effort that will be coordinated across departments, and the administration will launch outreach and education campaigns utilizing social media to reach borrowers to communicate the threats scammers pose.

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On October 3, 2022, the FTC published another Consumer Alert warning student and parent borrowers that there has been an uptick in scam companies trying to take advantage of the federal student loan forgiveness plan. The Consumer Alert explains that borrowers may receive offers that appear real because the scammer says they are affiliated with the Department, but the scammers will ask borrowers to confirm loan information to get more details they can use. The Consumer Alert suggests that consumers should not pay anyone to help a borrower apply for loan forgiveness, should not give away their FSA ID login information, and should not trust someone who contacts them and states they are affiliated with the Department.

A copy of the White House Fact Sheet is found at:

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/05/fact-sheet-biden-harris-administration-boosts-administration-wide-efforts-to-protect-student-loan-borrowers-from-scammers/>.

A copy of the Department's "Student Debt Relief Do's and Don'ts" is found at:

<https://blog.ed.gov/2022/10/student-loan-debt-relief-dos-and-donts/>.

A copy of the FTC Consumer Alert is found at:

<https://consumer.ftc.gov/consumer-alerts/2022/10/student-loan-scammers-are-circling-keep-them-bay>.

House and Senate Democrats Send Letter to Secretary Requesting Extension for the Waiver for the PSLF Program

On October 3, 2022, more than 100 House and Senate Democrats sent a letter to Secretary of Education Miguel Cardona requesting an extension for the time-limited waiver for the Public Service Loan Forgiveness (PSLF) program until July 1, 2023. The letter explained that the limited waiver accounts for about 90 percent of recent PSLF discharges approved by the Department of Education. However, the House and Senate Democrats argued that "operationalizing and explaining the waiver has been an incredible challenge for the Department, as well as its servicers." The letter concluded that the extension is necessary to ensure that all public servants with federal loans can benefit from the waiver.

A copy of the letter is found at: <https://www.bestcolleges.com/news/democrats-extend-public-service-loan-forgiveness-pslf-waiver/>.

President Biden Signs Continuing Resolution for FY 2023

On September 30, 2022, President Biden signed a continuing resolution (CR) for FY 2023 (H.R. 6833) that will allow the Federal government to operate through December 16, 2022, which permits

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Congress additional time to work through spending levels for FY 2023 following the mid-term elections. The House passed the CR on September 30, 2022, after it was passed by the Senate on September 29, 2022.

CBO Sends Letter to House and Senate Republicans Estimating Cost of President's Student Loan Forgiveness Plan at \$400 Billion

On September 26, 2022, the Congressional Budget Office (CBO) sent a letter to Senate Health, Education, Labor and Pensions Committee Ranking Member Richard Burr (R-NC) and House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) responding to questions regarding President Biden's Federal student loan forgiveness plan. According to the letter, the cost of student loans will increase by \$20 million due to the President's action to suspend payments, interest accrual, and involuntary collections from September 2022 to December 2022. After accounting for these suspensions, CBO estimates that the cost of student loans will increase by \$400 billion in present value as a result of the student loan forgiveness plan that cancels up to \$10,000 of debt issued on or before June 30, 2022, for borrowers with income below specific thresholds, and up to \$20,000 for borrowers with income below specific thresholds, who also received at least one Pell Grant.

A copy of the letter is found at: <https://www.cbo.gov/publication/58494>.

Senator Elizabeth Warren (D-MA) and Senate Majority Leader Chuck Schumer (D-NY) did not agree with "all of CBO's assumptions that underlie the analysis."

A copy of the press release from Senator Warren is found at:
<https://www.warren.senate.gov/newsroom/press-releases/majority-leader-schumer-and-senator-warren-joint-statement-on-cbo-estimate-of-student-debt-cancellation>.

Senate Democrats Block Republican Legislation Targeting President's Authority to Cancel Federal Student Loan Debt

On September 15, 2022, Senate Democrats led by Senator Elizabeth Warren (D-MA) objected to a unanimous consent request from Senator Rick Scott (R-FL) for the Senate to pass S. 4483, the *Debt Cancellation Accountability Act*. The proposed bill would have prevented the Secretary of Education from providing class-based loan forgiveness for federal student loans under Title IV of the *Higher Education Act of 1965* without the explicit appropriation of funds by Congress for such purpose.

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On the floor, Senator Scott said: “Biden wants to spend money that Congress has not appropriated for a loan forgiveness plan that Congress has not authorized. It’s illegal. It’s unconstitutional. It’s a gross abuse of authority and I won’t stand for it.”

On the floor, Senator Warren argued that Senator Scott’s claims that the recently announced federal student loan cancellation plan will primarily benefit “doctors and lawyers” and those who received an Ivy League education was incorrect, and “Senator Scott’s bill is just one of Republicans’ desperate efforts to block cancellation for millions of Americans. Now Republicans are happy to pass tax breaks and regulatory loopholes for billionaires and giant corporations, but they are fighting tooth and nail to keep working families from getting a penny of relief.”

House Education and Labor Committee Holds Markup of Resolutions Related to Student Loans

On September 15, 2022, the House Education and Labor Committee held a hearing to mark up a pair of resolutions of inquiry related to federal student loans. House Resolution 1295 directed the Secretary of Education to transmit documents to the House related to the U.S. Department of Education’s cost estimates for the limited waivers related to the Public Service Loan Forgiveness (PSLF) program and the Income-Driven Repayment plan. House Resolution 1296 directed the Secretary of Education to transmit documents to the House related to President Biden’s legal authority to forgive federal student loan debt.

Chairman of the House Education and Labor Committee Bobby Scott (D-VA) offered amendments to substitute for the two resolutions. After debate where Chairman Scott called the resolutions “unreasonable” and expressed his interest in reporting them to the House unfavorably, each House Resolution was voted unfavorably by a vote of 28-21.

At the markup, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) delivered remarks related to the resolutions and the need to hold the Biden administration accountable and provide transparency to the American people: “Democrats want unfettered control over our education system from kindergarten to college, and they’ll use every avenue to achieve their desired end goal. We must resist this state-sponsored indoctrination campaign.”

A copy of the Ranking Member’s remarks is found at:

<https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408563>.

House Education and Labor Committee Democrats Introduce *LOAN Act* to Lower the Cost of College

On September 15, 2022, the House Education and Labor Committee Chairman Bobby Scott (D-VA) and Higher Education and Workforce Development Subcommittee Chairwoman Frederica Wilson

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(D-FL) introduced the *Lowering Obstacles to Achievement Now (LOAN) Act*, which provides provisions aimed at lowering college costs. The bill would double the maximum award for the Pell Grant program to \$13,000 over the next five years; improve the Public Service Loan Forgiveness (PSLF) program; and codify the PSLF waiver announced by the Biden Administration in 2021. The *LOAN Act* would also make loans less expensive by expanding access to subsidized loans; limiting capitalization of interest; creating a safety net for vulnerable borrowers; and lowering interest rates on all new Federal student loans.

Chairman Scott said: “Simply put, by making loans cheaper to take out and easier to pay off, the *LOAN Act* will help improve the lives of student loan borrowers – both for now and in the future.” Chairwoman Wilson added: “For too many, the American dream is becoming more and more difficult to achieve – and a big reason is the life-long burdens of their student debt...and the *LOAN Act* will help students realize their full economic and overall potential.”

A copy of the press release on the *LOAN Act* is found at:

<https://bobbyscott.house.gov/media-center/press-releases/higher-education-leaders-introduce-new-bill-to-lower-cost-of-college>.

House Education and Labor Committee and House Oversight and Government Reform Committee Republicans Send Letter to White House Counsel Seeking Names of Officials Who Worked on Federal Student Loan Forgiveness Plan for Conflicts of Interest

On September 15, 2022, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) and House Oversight and Government Reform Committee Ranking Member James Comer (R-KY) sent a letter to White House Counsel Stuart Delery requesting information to determine whether political appointees of the Biden administration have a conflict of interest and whether they or their family members are poised to benefit from the new federal student loan forgiveness program. “We are investigating whether Biden Administration officials who worked on the student loan bailout will personally benefit from this financial windfall.”

A copy of the press release, which includes the text of the letter to the White House General Counsel is found at:

<https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408566>.

White House Releases State-by-State Data on How Biden’s Plan for Debt Relief will Benefit Borrowers in Fifty States

On September 20, 2022, the Department of Education announced that the White House released state-by-state data on how the Biden Administration’s plan for student debt relief will benefit borrowers in all fifty states, Washington, D.C., and Puerto Rico. Last month, President Biden

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announced the Administration's plan to give borrowers up to \$20,000 in debt relief to Pell Grant recipients and up to \$10,000 to other borrowers. The Administration expects that over 40 million borrowers are eligible for its student debt relief plan, and almost 20 million could see their entire remaining balance discharged.

The announcement noted that nearly 90 percent of relief dollars will go to those earning less than \$75,000 per year. No relief will go to any individual or household in the top 5 percent of incomes in the United States. "By targeting relief to borrowers with the highest economic need, the Administration's actions are also likely to help narrow the racial wealth gap."

A copy of the press release is found at:

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/20/fact-sheet-the-biden-harris-administrations-plan-for-student-debt-relief-could-benefit-tens-of-millions-of-borrowers-in-all-fifty-states/>

ED Releases the 2023-2024 College Financing Plan

On October 6, 2022, the Department of Education's Office of Postsecondary Education released the 2023-2024 College Financing Plan. The College Financing Plan is a consumer tool that participating institutions use to notify students about their financial aid package. The announcement included the College Financing Plans for undergraduates and graduates along with Frequently Asked Questions.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-10-06/2023-2024-college-financing-plan>.

FSA Releases Official Cohort Default Rates and National Default Rate Briefing for FY 2019 Default Rates

On October 3, 2022, Federal Student Aid (FSA) released the National Default Rate Briefing for FY 2019 official cohort default rates. The FY 2019 default rates were calculated using the cohort of student borrowers who entered repayment on their Direct Loans or FFEL between October 1, 2018 and September 30, 2019 and who defaulted between October 1, 2018 and September 30, 2021. The FY 2019 Official National Rate is 2.3 percent, which is a 68.5 percent decrease from the FY 2018 Official National Rate of 7.3 percent. The FY 2019 cohort default rates were significantly impacted by the pause on federal student loan payments that began on March 13, 2020.

FSA announced the distribution of FY 2019 official cohort default rates on September 29-30, 2022 to all eligible domestic and foreign institutions.

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A copy of the National Default Rate Briefing is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-10-03/national-default-rate-briefing-fy-2019-official-cohort-default-rates>.

A copy of the announcement of the distribution of the FY 2019 official cohort default rates is found at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-09-29/fy-2019-official-cohort-default-rates-distributed-sept-29-30-2022-updated-sept-30-2022>.

ED Issues Cost Estimate of Federal Student Loan Forgiveness Plan

On September 29, 2022, the Department of Education released its own estimates of what its Federal student loan forgiveness plan will cost over the next decade. According to the Department's estimate, the plan will cost, on average, \$30 billion per year over the next ten years. The Department added that the 10-year cost in terms of reduced cash flows into the federal government will be about \$305 billion. The Department's estimate is slightly lower than the Congressional Budget Office's (CBO) estimate, which provided an estimate of \$400 billion. (See CBO article above.)

A copy of the Department's press release is found at: https://www.ed.gov/news/press-releases/us-department-education-estimate-biden-harris-student-debt-relief-cost-average-30-billion-annually-over-next-decade?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

FSA Announces Posting of Quarterly Reports to FSA Data Center

On September 21, 2022, Federal Student Aid (FSA) released new quarterly portfolio reports on its website with key data and other information about the student aid programs as of June 30, 2022. As of June 22, 2022, about 43 million unduplicated student loan recipients have about \$1.62 trillion in outstanding loans, which represents an increase of \$26 billion in the outstanding loan balance since last year.

As a result of the special COVID-19 flexibilities for student loans, the number of recipients in repayment status has decreased sharply in the last two years. More than 25 million Direct Loan recipients, with over \$1 trillion in outstanding loans, are in forbearance status, and over 99 percent of these balances are in the special *CARES Act* forbearance. With almost all non-defaulted federal student loan borrowers now in forbearance, no new Direct Loan borrowers entered default during the past two years.

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A copy of the announcement is found at:

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-09-21/federal-student-aid-posts-quarterly-portfolio-reports-fsa-data-center>.

FSA Releases Updated Guidance and Procedures for Changes in Ownership

On September 15, 2022, Federal Student Aid (FSA) released an electronic announcement, which provided several updates and reminders to the change in ownership process for eligible institutions. This includes the discontinuance of the Comprehensive Pre-Acquisition Review process; clarification regarding the process that must be followed when an institution acquires another institution with the intention of adding the acquired institution as an additional location; and a reminder of the importance of working with the Department of Education in addition to the institution's accrediting agency when undergoing a change in ownership.

A copy of the announcement is found at:

<https://fsapartners.ed.gov/fsa-print/publication/1004186>.

CFPB Finds that Transcript Holds on a Student's Overdue Loan Payments are Coercive Practices

On October 6, 2022, the Consumer Financial Protection Bureau (CFPB) released a report that found some institutions had improper blanket policies of withholding transcripts to force students to make payments on institutional loans. The report was released after the CFPB announced on January 20, 2022, that it would examine the operations of colleges with institutional loan programs. The CFPB said that institutional policies to withhold transcripts in connection with an extension of credit are "abusive" under the *Consumer Financial Protection Act* and "directed institutional lenders to cease this practice."

The CFPB Director Rohit Chopra said: "Americans must exercise their right to their educational data to obtain a job or transfer schools." Further, Mr. Chopra said: "Our examinations of lenders found that blanket policies to withhold transcripts can run afoul of the law."

The report is found at: https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

A copy of the CFPB announcement is found at:

<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/>.

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Legal Challenges Against White House Federal Student Loan Forgiveness Plan Continue

On September 27, 2022, the Pacific Legal Foundation filed a lawsuit in the U.S. District Court for the Southern District of Indiana challenging the Department of Education's authority to cancel Federal student loans. According to the lawsuit, Frank Garrison, a borrower with Direct Loans, was seeking a temporary restraining order before October 1, 2022, which would prohibit the Department from enacting loan cancellation, and a declaratory judgment holding the cancellation of Federal student loans unlawful. The plaintiff is an individual borrower employed by the Pacific Legal Foundation, a nonprofit entity, who resides in Indiana, one of six states where loan cancellation is taxable to the borrower. He is enrolled in the Public Service Loan Forgiveness (PSLF) program where his loans will be cancelled in about four years. Under the Department's Federal student loan forgiveness plan, the plaintiff's cancelled amount of Direct Loans would be taxable under Indiana law; however, if he waits until the loan debt is cancelled under the PSLF program, the cancellation of his Direct Loans would be tax-free.

The complaint asserted that the Department had not undertaken a formal rulemaking or even a formal order setting out the details of the Federal student loan forgiveness plan, which he alleged violates the Administrative Procedures Act. Instead, the Department issued a press release and a Frequently-Asked-Questions document. The complaint also stated that the Federal student loan forgiveness plan exceeds the Department's authority since there is no clear authorization from Congress for an administrative agency to take economically and politically significant action. In addition, the complaint states that the Department's action violates the Constitution's nondelegation and separation of powers principles.

Ranking Member of the House Education and Labor Committee Virginia Foxx (R-NC) issued her support for the legal challenge by stating:

“The Biden Administration’s student loan bailout should be squashed by the heel of the law – its illegality must not be ignored. Thankfully, the Pacific Legal Foundation has taken a stand and knocked down the first domino in what will surely become a legal referendum against the Department of Education and the entire administration.”

On September 29, 2022, U.S. District Court for the Southern District of Indiana Judge Richard Young dismissed Garrison v. Cardona ruling that the plaintiff was not irreparably harmed because the Department allowed the borrower to opt out from receiving debt relief.

A copy of Congresswoman Foxx's press release is found at:

<https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408605>.

A second lawsuit was filed on September 29, 2022, by six Republican-led states arguing that the Administration's plan oversteps its executive authority. The complaint was filed by Republican attorneys general from Arkansas, Iowa, Kansas, Missouri, Nebraska, and South Carolina. The

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states are asking for an immediate restraining order because the Biden Administration indicated that it could start forgiving debt soon. The lawsuit terms the student loan forgiveness plan as “The Mass Debt Cancellation.”

A third lawsuit was filed on September 30, 2022, by the State of Arizona and its Attorney General who filed a complaint in the U.S. District Court for the District of Arizona challenging the White House’s Federal student loan forgiveness plan. The lawsuit asks the court to set aside the forgiveness plan, which it calls a “Debt Nullification Plan,” and issue an order declaring that it violates the separation of powers established by the U.S. Constitution and violates the Administrative Procedures Act because it is in excess of statutory authority, is arbitrary and capricious and an abuse of discretion, and does not observe procedures required by law. The complaint claims that it is inconceivable that Congress thought it was authorizing mass debt cancellation in passing the *HEROES Act*. The complaint asks for a temporary restraining order and preliminary and permanent injunctions.

A fourth lawsuit resulted in a dismissal on October 6, 2022 by U.S. District Court for the Eastern District of Wisconsin Judge William C. Griesbach. The lawsuit was filed by the Brown Country Taxpayers Association against the Biden Administration’s federal student loan forgiveness plan. The complaint argued that the White House and the Department of Education usurped Congressional powers by obligating federal taxes without authority. The critical issue was whether the plaintiff had standing to sue.

A fifth lawsuit was filed on October 10, 2022, by the Job Creators Network Foundation, a small business advocacy group, with the U.S. District Court for the Northern District of Texas to block the Biden Administration from forgiving federal student loan debt. The lawsuit argued that the Department of Education violated the Administrative Procedure Act by not seeking public comment before announcing the program, and also challenges the Administration’s legal justification for the program. The case was assigned to U.S. District Judge Reed O’Connor.

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