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July 11, 2022

Student Loan Forgiveness Under the Biden Administration, to Date

Executive Summary

- President Biden campaigned on providing \$10,000 in blanket forgiveness for all federal student loan holders but has yet to do so due to uncertainty over whether his administration has the legal authority without congressional action.
- In the meantime, the administration has used more targeted mechanisms to provide as much loan forgiveness as possible.
- The most recent Department of Education proposal to provide student loan forgiveness—this time through the federal courts—offers another way for the administration to accomplish this goal as the end-of-August deadline for the resumption of federal student loan repayments draws near; the administration is also expected to decide by late August whether to provide blanket loan forgiveness.

Introduction

President Biden campaigned on providing \$10,000 in blanket forgiveness for all federal student loan holders. As repeatedly [demonstrated](#) by the American Action Forum, blanket loan forgiveness in any amount would [disproportionately](#) benefit wealthier borrowers, disincentive future borrowers from reliably repaying loans, and inundate the federal student loan system with poorly underwritten loans. While the administration has yet to enact blanket loan forgiveness, it is not due to a lack of trying. Rather, it is due to uncertainty over whether it has the legal authority to enact such a policy without congressional action. Nevertheless, the administration has recently signaled that it will make the decision on whether to move forward with blanket loan forgiveness by the end of August.¹

The administration has to date used its executive authority to forgive student loan debt using targeted mechanisms that are less controversial than blanket forgiveness. Most recently, in June, the administration proposed a [settlement](#) to a federal class action lawsuit that would provide additional targeted loan forgiveness to students attending any of the 153 schools named in the lawsuit. Of note, the Biden Administration Department of Education's (ED) settlement did not, as is required by federal law, evaluate the individual merits of each submitted borrower defense application and instead provided blanket forgiveness to *all* students that have attended *any* of the 153 schools named in the lawsuit. Further, the proposed settlement would require ED to adjudicate another 68,000 borrower defense applications for schools not listed in the lawsuit. If ED chooses not to process these

¹ <https://www.insidehighered.com/news/2022/06/08/debt-cancellation-expected-late-summer>

applications in a timely manner, it must *automatically* grant full loan forgiveness for these applications, without evaluating their individual merits. Thus, if ED chooses to delay these other applications, they would automatically be granted forgiveness—an outcome commensurate with the Biden’s Administration’s stated goal to discharge student loan debt.

Whereas the Biden Administration has previously used its statutory authority to provide targeted loan forgiveness, in this recent proposal the administration is relying on the federal courts to provide more student loan forgiveness than it would otherwise be able to do.

Below is a review of the various actions the administration has taken to date.

Forgiveness Under the Biden Administration So Far

In the third quarter of 2020, more than half of federal student loan borrowers entered forbearance under the provision in the Coronavirus Aid, Relief, and Economic Security Act that allowed these borrowers to pause principal and interest payments in response to the COVID-19 pandemic. Since entering office, President Biden has extended the pause in repayment numerous times, with the current pause slated to end on August 31, 2022. As of the first quarter of 2022, more than half of federal student loan holders are still not making payments, with just over [one percent making regular payments](#).²

In the meantime, amid increasing calls to provide blanket forgiveness, the Biden Administration has used more targeted mechanisms that are less controversial. The main one is “borrower defense,” which allows the Department of Education (ED) to discharge loans for students who were defrauded or misled by their higher education institution. This mechanism also allows for discharging loans for students who attended a school that violated state or federal law.³

The administration has so far cancelled about \$25 billion in federal student debt for about 1.3 million borrowers in four tranches:⁴

1. \$7.3 billion for 127,000 borrowers through changes to the Public Student Loan Forgiveness program;
2. \$8.5 billion for 400,000 borrowers through Total and Permanent Disability Discharge;
3. \$1.2 billion for borrowers who attended ITT Tech before it closed;

² <https://studentaid.gov/data-center/student/portfolio>

³ A violation of federal or state law in the eyes of borrower defense usually entails a university making false and misleading claims about job placement rates for its alumni. An example of this is DeVry University, which the Department of Education claims falsely stated its alumni job placement rate was 90 percent, when it was 58 percent. <https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students>

⁴ <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges>

4. \$7.9 billion for 690,000 borrowers through borrower defense.

Additionally, while not yet finalized, the recent proposal by the Department of Education to settle a federal class action lawsuit would forgive about \$6 billion for an additional 200,000 borrowers.

Overall, discounting the loan forgiveness that would result from the federal class action lawsuit, this forgiveness amounts to 1.6 percent of outstanding federal student loans (\$1.61 trillion total in the first quarter of 2022) for 3.0 percent of borrowers (43.4 million holders of federal student debt in the first quarter of 2022).⁵ When including ED's class action settlement, which has yet to be finalized, the total forgiveness given would increase to 1.9 percent of outstanding federal student loans and cover 3.4 percent of federal student loan borrowers.

The Most Recent Administration Action: Federal Student Loan Forgiveness Through the Courts

On June 23, the Department of Education proposed to settle a federal class-action lawsuit in which it has been a defendant since 2019. The lawsuit was brought by former students of 153 different schools, most of which are for-profit higher education institutions. The plaintiffs, former students of those schools, argued that the ED under former President Trump had completely stopped processing borrower defense applications. ED eventually agreed to resume processing these applications, but the plaintiffs continued with the lawsuit, claiming ED was denying most applications without enough consideration. After months of litigation, the Biden Administration ED elected to propose a settlement that would give the plaintiffs much more than they initially sought—not only processing all borrower defense applications, but automatically approving every application of the students who attended any of the 153 schools and fully discharging their federal student loans spent on those schools.⁶

The proposed settlement represents another attempt by the administration to provide targeted loan forgiveness. Rather than use its statutory authority to provide loan forgiveness through borrower defense, the administration is instead relying on a federal court-mandated decision to provide such forgiveness. Specifically, ED determined in the proposed settlement that “attendance at one of these schools justifies presumptive relief, for purposes of this settlement ... whether credibly alleged or in some instances proven.” In other words, ED did not, as is required by federal law, evaluate the individual merits of each submitted borrower defense application and was instead able to avoid its own statutory requirements and provide widespread loan forgiveness through the federal courts. Further, the proposed settlement would require ED to adjudicate another 68,000 borrower defense applications for schools not listed in the lawsuit. If ED does not process these applications in a timely manner, it must automatically grant full loan forgiveness for

⁵ <https://studentaid.gov/data-center/student/portfolio>

⁶ <https://www.jdsupra.com/legalnews/departments-of-education-agrees-to-mass-3728593/>

these applications, without evaluating their individual merits. Given the Biden Administration's stated goal to provide blanket loan forgiveness, ED could very well drag its feet on these other applications in order to provide additional forgiveness automatically.

Going Forward

The current pause in repayment for federal student loans is slated to end on August 31, 2022. In the meantime, the Biden Administration has used more targeted mechanisms to provide as much loan forgiveness as possible without providing blanket forgiveness. In its most recent June proposal, the administration is again pursuing targeted loan forgiveness, this time through the federal courts. This strategy will allow the administration to provide more targeted forgiveness than it would otherwise be able to under its own statutorily granted powers. In the coming weeks, the administration will likely continue to find ways to provide targeted loan forgiveness until it announces its decision on blanket student loan forgiveness near the end of August.