

TYPES NOT MAPPED YET July 15, 2024 | TTR not mapped yet | Jim L. Matchefts

Student Loan Debt Relief: Is Forgiveness Really Divine?

On the presidential campaign trail in 2020, Joe Biden promised that, if elected, he would implement a program to forgive federal student loan debt for millions of Americans. As the COVID-19 pandemic was winding down, President Biden made good on that promise. On August 24, 2022, Secretary of Education Miguel Cardona announced a plan to forgive up to \$20,000 in federal student loan debt for borrowers earning less than \$125,000 per year (\$250,000 for married couples).

The Biden administration estimated the plan would cancel approximately \$430 billion in student loan debt and provide relief for up to 43 million borrowers, including cancelling the full remaining balances for about 20 million borrowers. The Department of Education estimated that the plan would cost an average of \$30 billion per year over the next decade.

While praised by consumer advocacy groups and others, the plan also faced heavy criticism, particularly from congressional Republicans. Critics argued that the plan was unfair to those who never attended college and to those who had paid off their loans. Others blamed the administration for doing nothing to address the soaring cost of college, arguing that those costs were the root cause of the student loan debt crisis.

Nebraska v. Biden

The plan's legal underpinning rested on the Higher Education Relief Opportunities for Students Act of 2003, aka the HEROES Act, which authorized the Secretary of Education to "waive or modify" any statute or regulation applicable to federal student financial assistance programs "as the Secretary deems necessary in connection with a war or other military operation or national emergency." In October 2022, a group of six red-state Attorneys General filed suit against the Biden administration, arguing that the plan exceeded the secretary's authority under the HEROES Act. After a federal trial judge rejected the plaintiffs' request to enjoin the debt relief plan and the Eighth Circuit Court of Appeals reversed the trial court, the case quickly landed in the Supreme Court.

The Supreme Court first considered whether the plaintiff states had standing to bring the lawsuit. Standing to sue requires that the plaintiff has suffered an "injury in fact," *i.e.*, a concrete and imminent harm to a legally protected interest. The Court determined that at least one state, Missouri, was threatened with an injury sufficiently concrete and particularized to establish standing. The Court agreed with the plaintiffs that, if the debt relief plan were allowed to proceed, then MOHELA, a Missouri-based public corporation that services federal student loans, would suffer significant lost revenue. The Department of Education pays servicing fees to MOHELA on a "per borrower" basis and, accordingly, MOHELA's revenues would dramatically decrease if 20 million or so borrowers suddenly had their loans forgiven. The Court further determined that, because MOHELA was created by the Missouri legislature to perform an "essential public function" and MOHELA contributes millions of dollars to the state for student financial assistance programs, financial harm to MOHELA would necessarily result in harm to the state of Missouri.

Having cleared the standing hurdle, the Court turned to the merits. While not disagreeing with the defendants that the COVID-19 pandemic constituted a national emergency as contemplated by the HEROES Act, the Court found that the debt relief plan nevertheless exceeded the Secretary's statutory authority: "We hold today that the [HEROES] Act allows the Secretary to 'waive or modify' existing statutory or regulatory provisions applicable to financial assistance programs under the [Higher Education Act of 1965], not to rewrite that statute from the ground up." With the debt relief plan dead in the water, the Biden administration quickly pivoted to a new strategy.

The SAVE Plan

In August 2023, shortly after the Supreme Court struck down the loan forgiveness plan, the administration announced Saving on a Valuable Education (SAVE), a new income-driven repayment plan for federal student loan

borrowers. The SAVE plan replaced the REPAYE plan. The key differences between the two plans are summarized as follows:

- Under the REPAYE plan, discretionary income was calculated as the difference between a borrower's adjusted gross income and 150% of the federal poverty guideline. Under the SAVE plan, this threshold was increased to 225% of the poverty guideline.
- REPAYE monthly payments were 10% of discretionary income for all loans, compared to 5% for undergraduate loans under the SAVE plan.
- To receive forgiveness on the REPAYE plan required 20 years (25 years for graduate loans) in repayment, while borrowers who borrowed \$12,000 or less are eligible for forgiveness after 10 years of payments under the SAVE plan.
- The SAVE plan eliminates 100% of remaining monthly interest for both subsidized and unsubsidized loans after a borrower makes a full scheduled payment. For example, if \$100 in interest accumulates each month and the borrower has a \$25 scheduled payment, the remaining \$75 would not be charged if the monthly payment is made on time.

Like the debt relief plan, the SAVE plan has been subjected to withering criticism. Two groups of red-state Attorneys General have filed lawsuits in federal courts in Missouri and Kansas seeking to enjoin implementation of the SAVE plan. Both suits are largely patterned after the complaint filed in *Nebraska v. Biden*. In the Missouri case, the district court has issued an order preliminarily enjoining the loan forgiveness provisions of the SAVE plan but allowing the other provisions to proceed. Both the plaintiffs and defendants have appealed that order to the Eighth Circuit Court of Appeals. In the Kansas case, the district court issued an order preliminarily enjoining further implementation of the SAVE plan in its entirety. The defendants appealed that order to the Tenth Circuit Court of Appeals, and the Tenth Circuit has issued an emergency order staying the district court's order pending appeal. On July 5, 2024, three of the plaintiff states filed an emergency application with the Supreme Court, asking that the Court vacate the Tenth Circuit's stay of the preliminary injunction.

Plan B

On April 8, 2024, President Biden announced what has been dubbed "Plan B," another attempt to provide broad-based relief to millions of federal student loan borrowers. While the plan that was rejected by the Supreme Court relied on the HEROES Act, the legal foundation for Plan B is based on certain sections of the Higher Education Act of 1965. Those provisions, in the view of the Department of Education, allow the secretary, under certain circumstances, to waive the requirement that a borrower repay a student loan debt. On April 17, 2024, the Department of Education published proposed rules to implement certain sections of Plan B.

The new plan would provide full or partial student loan forgiveness to certain groups of federal student loan borrowers:

- If the outstanding balance on a borrower's loans exceeds what they owed upon entering into repayment, the plan would forgive up to \$20,000 of that excess amount, regardless of the borrower's income. If the borrower's income is up to \$120,000 as an individual or up to \$240,000 as a married couple, the entire unpaid interest balance would be forgiven, provided that the borrower is enrolled in an income-driven repayment plan, such as the SAVE plan. The administration estimates that 23 million borrowers would benefit from this rule.
- A borrower's remaining balance would be erased if they entered repayment on undergraduate student loans on or before July 1, 2005, and graduate loans on or before July 1, 2000. The administration estimates that 2.6 million borrowers would benefit from this rule.
- If a borrower's school or program lost eligibility to participate in the federal student assistance programs, was denied recertification because it misled students or closed, or left students no better off financially than someone with a high school diploma, the borrower's student loan debt would be forgiven.
- Borrowers who are eligible for targeted loan forgiveness programs, like [Public Service Loan Forgiveness](#), who could have reached the loan forgiveness threshold for an income-driven repayment plan, or are eligible for forgiveness through closed school discharge, would still get relief even if they never applied for these programs. This part of the plan would erase student debt for around 2 million borrowers.
- Borrowers who are considered high risk for default would be eligible for automatic loan forgiveness. Those who have high debt and expenses, like child care and health care costs, may also be considered.

To date, Plan B has not drawn any legal challenges, but given the history of the administration's previous debt relief initiatives, such challenges are to be expected.

Where Do We Go From Here?

The Supreme Court will likely decide the fate of the SAVE plan. More broadly, the future of federal student loan forgiveness likely hinges on the results of the November presidential and congressional elections. If President Biden is re-elected, the push for debt relief will certainly continue. If Donald Trump is re-elected, debt relief plans, at



least at the executive level, will likely grind to a halt. At the congressional level, if one party were able to secure majorities in both houses of Congress, legislative action might also impact the future of debt relief plans.

Adding a final twist to this calculus, the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, holding that federal courts should no longer grant deference to administrative agency interpretations of statutes, will likely result in heightened judicial scrutiny of the Department of Education's efforts to implement debt relief initiatives.

authorsTest

jim

Jim L. Matchefts