

Federal Student Loans Temporarily Halted in Interest with Partial Discharge

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Student borrowers across the United States are experiencing various college loan repayment events, such as deferred interest rates and loan discharges.¹ Interest rates of federal student loans have been temporarily suspended as a result of the COVID-19 pandemic until September 1, 2023, or 60 days after the current litigation is resolved.² The student loan interest rate pause and forbearance was an effort by the Trump Administration and now the Biden Administration aimed to relieve students from obligatory loan payments during a time of economic and public health crisis.³ In continuation of this effort, the Biden Administration announced a new plan to discharge a portion of student loan debt.⁴

A major part of the Biden Administration's plan is the cancellation of student federal loan debt of up to \$20,000 for eligible borrowers.⁵ To qualify, eligible borrowers must have an annual income of less than \$125,000 as an individual, or \$250,000 for married couples, in 2020 and 2021.⁶ Likewise, only borrowers who are recipients of a Pell Grant will be eligible to receive the full amount of \$20,000, while the remaining eligible borrowers are capped at \$10,000.⁷ The Biden

¹ Ward Williams, *President Biden Announces Student Loan Forgiveness and Forbearance Decisions*, INVESTOPEDIA.COM (Aug. 24, 2022), <https://www.investopedia.com/biden-student-loan-forgiveness-forbearance-6502585>.

² Ryan Wangman, *This Week's Student Loan Refinancing Rates: January 4, 2023*, BUSINESS INSIDER (Jan. 4, 2023), <https://www.businessinsider.com/personal-finance/student-loan-refinancing-rates-today-wednesday-january-4-2023-1>.

³ *Biden-Harris Administration Announces Final Student Loan Pause Extension Through December 31 and Targeted Debt Cancellation to Smooth Transition to Repayment*, U.S. DEP'T OF EDUC. (Aug. 24, 2022), <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment>.

⁴ *Id.*

⁵ *The Biden-Harris Administration's Student Debt Relief Plan Explained*, FED. STUDENT AID, <https://studentaid.gov/debt-relief-announcement/> (last visited Aug. 28, 2022).

⁶ *FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most*, THE WHITE HOUSE (Aug. 24, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most>.

⁷ *Id.*



administration claims the additional loan forgiveness for Pell Grant recipients will help mitigate racial inequality as Black students historically receive twice as many Pell Grants as white students.⁸ Eligible borrowers will be limited in their recovery to the amount of loans they presently owe.⁹ For example, a borrower who owes \$7,500 in federal student loans may only receive \$7,500 in debt forgiveness.¹⁰ Additionally, only federal loans accepted before July 1, 2022, will be eligible for forgiveness.¹¹

The potential effects of this loan forgiveness are estimated to be far reaching. The U.S. Department of Education estimates that up to 43 million borrowers may be eligible for loan forgiveness under this plan, with an estimated 27 million borrowers eligible for the full \$20,000.¹² Of the eligible borrowers, the Department of Education estimates that up to 20 million borrowers may have their entire remaining loan balance paid in full.¹³

The Biden Administration's mission to enact this loan forgiveness plan is legally justified by the HEROES Act and is unlike any prior instances of debt discharge.¹⁴ Historically, loan discharge was only achievable through the Borrower Defense Fund.¹⁵ The Borrower Defense Fund, a federal regulation established in 1994, permits students indebted to their college or

⁸ *Id.*

⁹ *The Biden-Harris Administration's Student Debt Relief Plan Explained*, FED. STUDENT AID, <https://studentaid.gov/debt-relief-announcement/> (last visited Aug. 28, 2022).

¹⁰ *Id.*

¹¹ Annie Nova, *After Biden's Announcement on Student Loan Forgiveness, Borrowers Have Countless Questions. Here's What We Know So Far*, CNBC (Aug. 26, 2022), <https://www.cnbc.com/2022/08/26/more-details-emerge-about-biden-federal-student-debt-forgiveness-plan.html>.

¹² *FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most*, THE WHITE HOUSE (Aug. 24, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ben Miller, *The Strange History of the Student Borrower Defenses Provision*, NEW AMERICA (Apr. 7, 2015), <https://www.newamerica.org/education-policy/edcentral/borrower-defenses/>.



institution to apply for loan discharge through claims of institutional misrepresentation.¹⁶ The Borrower Defense Fund became more well-known during the 2015 student repayment strike against the for-profit institution, Corinthian College.¹⁷ Students at Corinthian College claimed the institution had misrepresented educational outcomes, employment opportunities, and viability of transfer credits.¹⁸ Along with Corinthian College, a California federal district court granted preliminary approval of a settlement for student loan cancellation for those defrauded by their colleges and institutions.¹⁹ The preliminary approval of a settlement arises from claims against over one hundred fifty colleges and institutions that are largely for-profit organizations.²⁰ The preliminary settlement intends to offer relief for those borrowers indebted by their school's misrepresentation.²¹

In June 2022, the Education Department announced a \$5.8 billion student loan discharge for borrowers who attended Corinthian College or any affiliated institution that had intentionally misrepresented information.²² The discharge for student borrowers to lessen the financial burden garnered national attention towards the Borrower Defense Fund.²³ Following the announcement for students of Corinthian College, a secondary approach to loan forgiveness arose during the

¹⁶ Matt Ryan Webber, *What is Borrower Defense?*, INVESTOPEDIA (May 16, 2022), <https://www.investopedia.com/what-is-borrower-defense-5214746#:~:text=Key%20takeaways-,Borrower%20defense%20loan%20discharge%2C%20often%20shortened%20to%20%E2%80%9Cborrower%20defense%2C,reached%20public%20awareness%20in%202015.>

¹⁷ Annie Nova, *Biden Administration Will Cancel Student Debt for Half a Million Students from Corinthian Colleges*, CNBC (June 2, 2022), <https://www.cnbc.com/2022/06/01/biden-administration-will-cancel-student-debt-for-half-a-million-students-from-corinthian-colleges-.html>.

¹⁸ *Id.*

¹⁹ Cory Turner, *200k Student Borrowers are Closer to Getting Their Loans Erased After Judge's Ruling*, NPR.ORG (August 5, 2022), <https://www.npr.org/2022/07/21/1112554478/student-loan-forgiveness-borrower-defense>.

²⁰ *Id.*

²¹ *Sweet v. Cardona*, No. 19-CV-03674-WHA, 2022 WL 16966513 (N.D. Cal. Nov. 16, 2022).

²² Cory Turner, *supra*.

²³ *Id.*



COVID-19 pandemic: the Higher Education Relief Opportunities for Students Act of 2003 (the “HEROES Act”).²⁴

The Biden Administration is using the Covid-19 pandemic and the HEROES Act as the legal justifications for their student debt relief plan.²⁵ The original HEROES Act of 2001 was enacted by Congress to “authorize the Secretary to “waive or modify any statutory or regularly provision applicable to” student loan programs under title IV “as may be necessary to ensure that” that the Secretary could alleviate hardships individuals suffered because of September 11 and any subsequent terrorist attacks.”²⁶ The 2003 update to the HEROES Act removed the September 11 provision and replaced it with “any presidentially declared national emergency,” and made it applicable to persons who “suffered direct economic hardship as a direct result of a war or other military operation or national emergency.”²⁷ As the COVID-19 pandemic was a presidentially declared national emergency, the Biden administration claims they are within the scope of the HEROES Act and is thus free to proceed with student debt relief.²⁸

Unlike the Borrower Defense Fund, the HEROES Act was enacted through Congressional approval. However, the loan forgiveness programs rely on vastly different criteria. The Borrower Defense Fund requires student loan borrowers to provide evidence that they attended a school and believe the school misled them or engaged in misconduct that violated state law in relation to the loan or educational services provided.²⁹ In contrast, the HEROS Act offers loan forgiveness during

²⁴ James Kvaal, *Statement on the Heroes Act*, THE INST. FOR COLL. ACCESS & SUCCESS (May 12, 2020), <https://ticas.org/covid-19-2/statement-on-the-heroes-act/>.

²⁵ Christopher H. Schroeder, *Use of The Heroes Act of 2003 to Cancel the Principal Amounts of Student Loans*, THE U.S. DEP’T OF JUST. (Aug. 23, 2022), <https://www.justice.gov/sites/default/files/opinions/attachments/2022/08/24/2022-08-24-heroes-act.pdf>.

²⁶ *Id.* at 3.

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 25.

²⁹ *Borrower Defense Loan Discharge*, FED. STUDENT AID, <https://studentaid.gov/borrower-defense/> (last visited Jan. 24, 2023).



times of national emergency.³⁰ In light of the COVID-19 pandemic, a formal application process will be required of student loan borrowers seeking loan forgiveness.³¹ Both programs provide a similar end result of student loan forgiveness under vastly different mechanisms.

Loan forgiveness is affecting many student borrowers across the United States. The Department of Education estimates nearly 43 million borrowers to be financially affected by the loan forgiveness plan.³² From the Borrower Defense Fund to the temporary relief from federal interest rates under the expanded HEROES Act, students are gaining awareness of alternate loan repayment options. The Education Department has approved over \$25 billion dollars in loan forgiveness for nearly 1.3 million student borrowers to date.³³ In the coming weeks, the Supreme Court is to review multiple cases which will decide the fate of the COVID-19 loan forgiveness plan.³⁴

³⁰ Kvaal, *supra*.

³¹ Medora Lee, *When Will Student Loans be Forgiven? What to Know About Debt Relief Applications*, USA TODAY (Oct 3, 2022), <https://www.usatoday.com/story/money/personalfinance/2022/10/02/student-loan-forgiveness-applications-online-soon-how-apply/8136477001/>.

³² Nova, *Supra*, note 12.

³³ *Education Department Approves \$5.8 Billion Group Discharge to Cancel all Remaining Loans for 560,000 Borrowers who Attended Corinthian*, U.S. DEP'T OF EDUC. (June 1, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges>.

³⁴ Peter Baker, *Biden Administration Defends Student Loan Cancellation at Supreme Court*, N.Y. TIMES (Jan 4, 2023), <https://www.nytimes.com/2023/01/04/us/politics/biden-student-loans-supreme-court.html>.

