



## Education ADVISORY ■

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### Where Does Student Debt Relief Go After the Supreme Court Struck Down Biden's Debt Cancellation Plan?

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The Supreme Court's opinion in *Biden v. Nebraska, et al.* establishes further limits on the Department of Education's ability to leverage broadly worded statutes to promulgate new rules and regulations of political or economic significance. Following the Supreme Court's decision, the Biden Administration announced new plans to discharge student loan debt.

#### The Biden Administration's Debt Cancellation Plan

On August 24, 2022, the Biden Administration announced a plan to cancel approximately \$430 billion in federally held student loan debt held by nearly 43 million borrowers. The Administration cited the Higher Education Relief Opportunities for Students (HEROES) Act as the statutory authority for the Secretary of Education to cancel student debt on a mass basis. The Secretary argued that the HEROES Act allows the department to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under" Title IV of the Higher Education Act (HEA) "in connection with a national emergency" and that therefore it had the authority to enact the debt cancellation plan in response to the COVID-19 national emergency.

#### The Supreme Court Agreed to Hear Challenges to the Debt Cancellation Plan

The debt cancellation plan drew legal challenges from around the nation. The Supreme Court granted cert and heard two of those challenges:

- ***Biden v. Nebraska***: Several states, including South Carolina, Arkansas, Missouri, Iowa, Nebraska, and Kansas, filed a lawsuit alleging that the debt cancellation plan violated the Administrative Procedure Act, exceeded statutory authority, and ran afoul of the separation of powers doctrine.
- ***Department of Education v. Brown***: Two individual plaintiffs challenged the debt cancellation plan, arguing that the Department of Education violated the Administrative Procedure Act by arbitrarily excluding certain borrowers from the plan and by failing to meet notice and comment requirements.

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## The Supreme Court Found the Debt Cancellation Plan Unconstitutional

On August 23, 2023 the Court issued two separate opinions. The Court found that the plaintiffs in *Department of Education v. Brown* lacked standing to challenge the debt cancellation plan. However, the Court found at least one of the plaintiffs (Missouri) in *Biden v. Nebraska* did have standing, and then ruled the plan unconstitutional. The Supreme Court ruled that:

- The HEROES Act did not grant the Secretary of Education authority to cancel \$430 billion of student loan principal. The Act only allows the Secretary to “waive or modify” existing statutory or regulatory provisions applicable to financial assistance programs under the Education Act, while the debt cancellation plan would instead rewrite that statute from the ground up. The Court found that the term “modify” does not authorize basic and fundamental changes in the scheme designed by Congress, and instead that term must be read to mean “to change moderately or in minor fashion.” An unprecedented \$430 billion mass debt forgiveness is neither moderate nor minor and instead creates a novel loan forgiveness program. The Court found that the plan “modified” the scheme articulated by the HEROES and Education Acts “only in the same sense that ‘the French Revolution modified the status of the French nobility.’”
- Likewise, the term “waived” must be read to only allow waiver of specific provisions of the Act, and the debt cancellation plan did not identify any provision that it was actually waiving.
- The Court also added that it would be a “daunting task” for the Secretary to show that the debt cancellation plan worked to ensure borrowers were not left in a worse position, as required by the HEROES Act, rather than leaving borrowers in a *better* position.
- The Court ruled that the authority to cancel \$430 billion in student debt is Congress’s, not the Secretary’s. “Among Congress’s most important authorities is its control of the purse.”

In sum, the Court ruled the HEROES Act does not clearly delegate to the Secretary the authority to release 43 million borrowers from their obligations to repay \$430 billion in student debt. The “economic and political significance” of the debt cancellation plan is staggering and impacts Congress’s power of the purse. The impact amounts to nearly one-third of the government’s annual discretionary spending. Congress did not authorize the plan by clear statement or otherwise. Even then-Speaker Nancy Pelosi plainly stated that the Secretary did not have the power to enact such a plan.

Congress has repeatedly considered and declined to pass a bill authorizing student debt cancellation, which it would not have done if it understood itself to have delegated student debt cancellation authority. The debt cancellation plan therefore is an unlawful arrogation of the Legislature’s spending power by the Executive. “Congress [must] speak clearly before a Department Secretary can unilaterally alter large sections of the American economy.”

### Key Takeaway

After finding that the text of the HEROES Act did not authorize the debt cancellation plan, the Court also ruled the Biden Administration and the Secretary failed to satisfy the major questions doctrine. That doctrine requires Congress to speak clearly and explicitly when granting executive agencies, such as the Department of Education, the power to make politically or economically significant decisions. Here, the debt cancellation plan failed to satisfy the doctrine because “[t]here is no serious dispute that the Secretary claims the authority to exercise control over ‘a significant portion of the American economy’” and the HEROES Act does not provide authorization for the debt cancellation plan, let alone clear or explicit authorization.

With this ruling, the Supreme Court again signals its skepticism of the Executive's efforts to pass politically or economically significant regulations by reading broad and vaguely worded statutes as delegating authority to the Executive that is traditionally vested in Congress. This is especially true when, as here, Congress has recently considered passing a bill on the same issue but declined.

## **Where Student Debt Relief Goes from Here**

In his remarks following the Court's decision, President Biden stated that he was "not going to stop fighting to deliver borrowers what they need" and that his administration would remain focused on student debt relief. President Biden then announced that the new approach to securing student debt relief would be grounded in the HEA.

The Secretary of Education initiated a rulemaking process for this alternative path to student debt relief under the HEA. The Department of Education's notice announced that a public hearing would take place on July 18 to solicit written comments from stakeholders. Negotiated rulemaking sessions will take place this fall, and the department hopes to move as quickly as possible under the law. President Biden stated that the "new path is legally sound. It's going to take longer, but, in my view, it's the best path that remains to providing for as many borrowers as possible with debt relief." The President did not give details about who would qualify under the plan or how much debt relief would be available to borrowers.

Additionally, President Biden and the Department of Education announced a 12-month "on-ramp" repayment program that will run from October 1, 2023 to September 30, 2024. This 12-month period will allow borrowers to ease back into repayment without harsh consequences for missed payments. While interest will continue to accrue during this on-ramp period, loans will not go into default and borrowers will not be reported to credit bureaus or referred to collection agencies for late, missed, or partial payments.

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