



# Student loan forgiveness update: What borrowers need to know after federal court struck down program

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Student loan borrowers are now waiting indefinitely to see if they'll receive debt relief under President Joe Biden's student loan forgiveness program after a federal judge in Texas struck down the program Thursday, declaring it illegal.

The Department of Justice immediately appealed to the 5th US Circuit Court of Appeals. But that case will have to play out before the Biden administration can cancel any federal student loan debt under the program.

While the Biden administration has faced several legal challenges to the student loan forgiveness program since it was announced in August, the ruling on Thursday is the most significant setback thus far -- prompting the Department of Education to stop accepting applications for debt relief.

Biden's program was already on hold due to a separate legal challenge, but the administration had continued accepting applications, having received 26 million to date, CNN reported.

Under the rules of the program, eligible low- and middle-income borrowers can receive up to \$10,000 of federal student loan forgiveness and up to \$20,000 in cancellation if they also received a Pell grant while enrolled in college.

The legal road ahead is murky, but it could take many months for the issue to be resolved.

The Texas decision "makes it more likely that the issue will ultimately go to the Supreme Court, though it is still too early to say," said Abby Shafroth, staff attorney at the National Consumer Law Center.

## **What happens now for borrowers?**

Borrowers will have to wait for the government's appeal to the 5th Circuit Court to play out. While it can be tough to follow all the various legal challenges, borrowers can subscribe for updates from the Department of Education and check the Federal Student Aid website for further information.

It could take months for the court to issue a final ruling. If it overturns the Texas lower court's ruling, then the Biden administration could begin canceling student debt.

But the Department of Justice could also ask for an emergency stay of the Texas judge's order. If granted -- and if a different appeals court ends its temporary stay on the program in a separate,

pending case -- then the administration would be allowed to cancel debt before a final ruling is made by the 5th Circuit.

Initially, the Biden administration said that it would start granting student loan forgiveness before payments are set to resume in January after a years-long pandemic pause.

But Thursday's ruling in Texas puts that timeline in jeopardy.

"For the 26 million borrowers who have already given the Department of Education the necessary information to be considered for debt relief -- 16 million of whom have already been approved for relief -- the Department will hold onto their information so it can quickly process their relief once we prevail in court," said White House press secretary Karine Jean-Pierre in a statement Thursday.

"We strongly disagree with the District Court's ruling on our student debt relief program," she said.

### **What are the legal arguments?**

The Biden administration has argued that Congress granted the secretary of education the power to broadly discharge student loan debt in a 2003 law known as the HEROES Act, which was passed in the wake of the September 11 terrorist attacks.

The government's lawyers argue that the law allows the secretary to discharge debt in an event of a national emergency, including the Covid-19 pandemic.

But the Texas federal judge found that the law does not provide the executive branch clear congressional authorization to create the student loan forgiveness program.

"The program is thus an unconstitutional exercise of Congress's legislative power and must be vacated," wrote Judge Mark Pittman, who was nominated by then-President Donald Trump.

"In this country, we are not ruled by an all-powerful executive with a pen and a phone," he continued.

The Texas lawsuit was filed by a conservative group, the Job Creators Network Foundation, in October on behalf of two borrowers who did not qualify for debt relief.

One plaintiff did not qualify for the student loan forgiveness program because her loans are not held by the federal government and the other plaintiff is only eligible for \$10,000 in debt relief because he did not receive a Pell grant.

They argued that they could not voice their disagreement with the program's rules because the administration did not put it through a formal notice-and-comment rule making process under the Administrative Procedure Act.

"This ruling protects the rule of law which requires all Americans to have their voices heard by their federal government," said Elaine Parker, president of Job Creators Network Foundation, in a statement Thursday.

The advocacy group was founded by Bernie Marcus, a major Trump donor and former Home Depot CEO.

### **Where do the other lawsuits stand?**

Beyond the Texas case, the Biden administration is facing several other lawsuits over the student loan forgiveness program.

A lawsuit brought by six Republican-led states is pending at the 8th US Circuit Court of Appeals. On October 21, that appeals court put an administrative hold on the program, banning the administration from canceling any debt.

The states have argued that the Biden administration does not have the legal authority to grant broad student loan forgiveness, as well as that the program would hurt them financially for a variety of reasons. A lower court had dismissed the case, ruling that the states did not have legal standing to sue. The states immediately appealed to the 8th Circuit.

The Biden administration has had several wins in court thus far, as plaintiffs have struggled to show they have standing to sue.

One lawsuit, filed by a Wisconsin taxpayers group, was also dismissed by a trial-level federal judge, ruling that the group lacked standing to bring the challenge. The plaintiffs had argued that the loan forgiveness program, which is estimated to cost about \$400 billion, would hurt taxpayers and the US Treasury. Supreme Court Justice Amy Coney Barrett also rejected the taxpayers group's request for the Supreme Court to intervene.

A separate case, which was also rejected by Barrett and dismissed by a lower court, was filed by a borrower who argued that the forthcoming loan forgiveness would leave him with a bigger state tax bill. Some states may tax the debt forgiveness, but it is not taxable on the federal level.

The Biden administration is also facing pending lawsuits from Arizona's GOP Attorney General Mark Brnovich and the Cato Institute, a libertarian think tank. Both lawsuits argue that the president does not have the legal authority to broadly cancel student loan debt.

Brnovich argues that the state has standing to sue because the student loan forgiveness program could reduce Arizona's tax revenue. The state code doesn't consider the loan forgiveness as taxable income.

The Arizona complaint also argues that the forgiveness policy will hurt the attorney general office's ability to recruit employees. Currently, its employees may be eligible for the federal Public Service Loan Forgiveness program, but some potential job candidates may not view that as a benefit if their student loan debt is already canceled, the lawsuit argues.

The Cato Institute makes a similar argument about the forgiveness program making it harder for it to recruit employees.

### **Who may be eligible for student loan forgiveness?**

If Biden's program is allowed to move forward, individual borrowers who earned less than \$125,000 in either 2020 or 2021 and married couples or heads of households who made less than \$250,000 annually in those years could see up to \$10,000 of their federal student loan debt forgiven.

If a qualifying borrower also received a federal Pell grant while enrolled in college, the individual is eligible for up to \$20,000 of debt forgiveness.

There are a variety of federal student loans and not all are eligible for relief. Federal Direct Loans, including subsidized loans, unsubsidized loans, parent PLUS loans and graduate PLUS loans, are eligible.

But federal student loans that are guaranteed by the government but held by private lenders are not eligible unless the borrower applied to consolidate those loans into a Direct Loan before September 29.