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INSIGHT

Student Loan Debt Relief: The Biden Administration's Second Proposed Rule

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On October 31, 2024, Secretary of Education Miguel Cardona (the Secretary) published in the *Federal Register* a Notice of Proposed Rulemaking (NPRM) describing when the Secretary may waive all or part of a borrower's outstanding federal student loan debt pursuant to Section 432(a)(6) of the Higher Education Act (HEA). That statutory provision authorizes the Secretary to "enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired" under the Federal Family Education Loan program (FFELP). The U.S. Department of Education (ED) has argued this provision also applies to the Direct Loan program—the primary federal student loan program—and the Health Education Assistance Loan (HEAL) program.

The NPRM results from negotiated rulemaking that occurred between October 2023 and February 2024. It is the second of two proposed rules derived from the student loan debt relief negotiated rulemaking. ED issued the NPRM to clarify how it would exercise its authority under HEA Section 432(a)(6). ED published the first proposed rule on April 17, 2024; a federal court has since preliminarily enjoined ED from implementing that proposed rule. ED has stated that the second proposed rule would "operate separately and distinctly" from the first proposed rule. For information about the first proposed rule, see CRS Report R48156, *The Biden Administration's Student Loan Debt Relief Rulemaking*.

Proposed Loan Waivers

Borrowers owe approximately $1.6 trillion in federal student loans, borrowed by or on behalf of more than 42 million individuals. Under the second NPRM, the Secretary proposes to waive up to the outstanding balance of a borrower's ED-held loans under the FFELP, Direct Loan program, Perkins Loan program, and HEAL program if he determines that the borrower "is experiencing hardship" related to the loan "such that the hardship is likely to impair the borrower's ability to fully repay the Federal government" or "costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection" of the debt.

To determine whether a borrower is experiencing hardship, the Secretary would consider a list of 17 nonexhaustive factors. These factors fall into several general categories:

- A borrower's current and past finances (e.g., household income, previous receipt of a Pell Grant, receipt of means-tested public benefits),
- A borrower's experience repaying student loans (e.g., repayment history, age of borrower's loan),
- A borrower's personal attributes (e.g., age, disability),
- A borrower's postsecondary experiences (e.g., type of institution attended, typical student outcomes of the program the borrower attended), and
- Other factors (e.g., "the extent to which hardship is likely to persist," "other indicators of hardship identified by the Secretary").

The Secretary proposes two separate processes, referred to in the NPRM as the "predictive assessment" and the "holistic assessment," through which the Secretary would assess a borrower's hardship based on these factors to determine whether to waive a loan balance.

Under the predictive assessment, the Secretary proposes to automatically (i.e., without a borrower application) waive all or part of a borrower's outstanding loan balance if he determines, based on the hardship factors, that the borrower is experiencing hardship such that they are at least 80% likely to default on their loan in the two years following October 31, 2024. The NPRM explains that ED would make this determination using data in ED's possession. ED would input these data into a statistical model and use "machine learning approaches" to predict a borrower's likelihood of default. The NPRM states that loan waiver under this process would be "immediate, one-time relief as soon as practicable."

Under the holistic assessment, the Secretary proposes to use data in ED's possession or data obtained from a borrower's application to waive all or part of a borrower's loan balance based on a hardship finding. The text of the proposed regulation does not provide additional details, but the NPRM's explanatory text elucidates on this process. It explains that waiver would be provided if, based on ED's holistic assessment, ED determines that "the borrower is highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship." Although the proposed regulatory text contemplates the creation of a borrower application for this process, the NPRM states that the Secretary may also provide automated relief under this second process. Finally, the NPRM states this option would be available to borrowers going forward, even after ED finishes granting waivers under the predictive assessment.

Estimated Waiver Effects

In the NPRM's cost-benefit analysis, ED estimates the number of borrowers who would qualify for *each* of the proposed waiver processes as well as the net budget impact for each process. The estimates of eligible borrowers and net budget costs in this second student loan debt relief NPRM do not include potential overlap with the student loan debt relief proposed in the first student loan debt relief NPRM. Thus, the total estimate of eligible borrowers and net budget costs associated with the two student loan debt relief NPRMs might be overstated if estimates from each are added together.

- ED estimates approximately 6 million borrowers would be eligible for waiver under the predictive assessment, resulting in a net budget impact of about $70.2 billion for loan cohorts 1994-2024.
- ED estimates approximately 1 million borrowers in loan cohorts 1994-2024 and 1 million borrowers in loan cohorts 2025-2034 could be approved for waiver under the holistic assessment. ED estimates this would have a net budget impact of about $41.7 billion for loan cohorts 1994 through 2024. (These estimates exclude borrowers who would be

- expected to receive a waiver of the full amount of their outstanding loans under the predictive assessment.)

Next Steps

ED says it will accept public comment on the NPRM through December 2, 2024. It expects to finalize the regulations "in 2025."

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