

# The Federal Update for November 4, 2022

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: November 4, 2022

[Legislation and Guidance 1](#_Toc118386283)

[ED Releases Final Higher Ed Regulations 1](#_Toc118386284)

[News 2](#_Toc118386285)

[Indiana Borrowers Appeal to SCOTUS on Debt Relief 2](#_Toc118386286)

[School Administrators Group Urges Changes to K-12 Education 3](#_Toc118386287)

[Reports 3](#_Toc118386288)

[Study Measures Achievement Loss During Pandemic 3](#_Toc118386289)

## Legislation and Guidance

### ED Releases Final Higher Ed Regulations

In a final regulation published in the *Federal Register* on Monday, the U.S. Department of Education (ED) laid out requirements and standards for targeted debt relief programs including Borrower Defense to Repayment.

The rules are intended to “establish a fairer process” for borrowers to receive loan forgiveness. Claims must be based on one of five “actionable circumstances,” each of which are defined and described at length in the new rule: substantial misrepresentation, substantial omission of fact, breach of contract, aggressive and deceptive recruitment, and judgments or secretarial action. Claims can be considered individually or as a group, but the new rule allows for only full relief (where the previous rule allowed for partial forgiveness to be granted). In a fact sheet, ED said that the agency “has tried for years to construct a workable process for determining partial discharge amounts and has concluded there is not a consistent way to achieve that goal.” ED also lays out the ways it will try to recoup the cost of borrower defense forgiveness from colleges in various provisions which set out clawback standards which will cover loans originated after July 1, 2023. False certification – where a college falsely certifies a borrowers eligibility for student loans, incurring debt on their behalf – will yield an easier path to discharge of student loans under this final rule as well.

For borrowers whose schools have closed, the regulations would provide for an automatic discharge one year after a college’s closure date for borrowers who were enrolled at the time of closure or left 180 days before closure and who did not accept a teach-out agreement or continuation of the program at another location.

Colleges that participated in the federal Direct Loan program will be prohibited from requiring borrowers to waive their right to join class-action lawsuits or agree to mandatory arbitration clauses that cut off their ability to take institutions to court. Colleges that use arbitration will have to share records with ED.

Additionally, the new rules eliminate interest capitalization where not required by law. This means that accumulated interest will no longer be added to a borrower’s principal when they enter repayment or default, exit forbearance, or leave any income-driven repayment plan besides Income-Based Repayment.

Finally, there are some changes to the Public Service Loan Forgiveness program which allow payments to be counted if they are made late, in installments, or in a lump sum. Deferment and forbearance can also count toward loan forgiveness in certain circumstances, including during periods of cancer treatment or military service. Additional rules on Public Service Loan Forgiveness are expected in the coming months.

The rules are the end result of multiple negotiated rulemaking sessions conducted last fall, along with public hearings and comment periods. ED said that it received more than 5,000 comments on the draft rule, leading advocates for for-profit institutions to criticize the timeline for publication of the rue, saying ED could not have meaningfully considered the comments submitted. The final version will go into effect on July 1, 2023 and will apply to all borrower defense claims pending on or received after that date.

The [final rule is available here](https://public-inspection.federalregister.gov/2022-23447.pdf?utm_campaign=pi+subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email).

Author: JCM

## News

### Indiana Borrowers Appeal to SCOTUS on Debt Relief

Two federal student loan borrowers from Indiana submitted an emergency appeal to the U.S. Supreme Court on Tuesday asking the Court to prevent the administration’s student debt relief plan. The two borrowers in this case have argued in lower courts that they will be harmed due to the State of Indiana’s plan to tax student debt relief. The administration, however, has modified its plan in recent weeks to allow borrowers to opt out of receiving debt cancellation, calling into question whether the plaintiffs have standing in the case.

The case comes from the 7th Circuit Court of Appeals, which is assigned to Justice Amy Coney Barrett for emergency appeals. Barrett rejected an emergency appeal on the debt relief plan last month. Although no legal challenges have been successful yet, the 8th Circuit Court of Appeals is temporarily prohibiting the administration from issuing debt relief under its plan while it reviews an emergency appeal from eight Republican-led States. Several other lawsuits against the administration’s debt relief plan are moving through the federal court system, but most plaintiffs have faced challenges in proving harm.

Meanwhile, the administration announced Thursday that it will approve the first batch of debt relief applications – approximately 16 million – but due to the stay issued by the 8th Circuit Court of Appeals last month, the U.S. Department of Education will not yet be able to take the final step of erasing the debt of those approved borrowers.

Resources:

Michael Stratford, “Education Department set to approve first 16M student debt relief applications,” *Politico*, November 3, 2022.

Michael Stratford, “Indiana borrowers ask Supreme Court to block Biden’s student debt relief,” *Politico*, November 1, 2022.

Author: KSC

### School Administrators Group Urges Changes to K-12 Education

The American Federation of School Administrators sent a letter to President Biden on Monday that urges the administration to convene a panel of education stakeholders in order to develop a “new vision of public education.” The letter was prompted in part by the recent dip in scores on the National Assessment of Educational Progress.

The letter notes the impact of the COVID-19 pandemic on the educational system and on student achievement, but it also states that the K-12 public education system has been struggling for decades. The letter also expresses concerns over the country’s focus on assessments in K-12 education, as well as how politicized educational issues have become over the years.

ASFA asks President Biden to include “educators, parents, and students” on a national panel that will be tasked with providing recommendations to improve the current K-12 public education system to “allow compelling teaching and the joy of learning to flourish.”

Resources:

Juan Perez Jr., “School chiefs’ union urges Biden to launch ‘new vision for education,’” *Politico*, November 2, 2022.

Author: KSC

## Reports

### Study Measures Achievement Loss During Pandemic

The Education Recovery Scorecard, a study conducted by Harvard and Stanford professors, examined student performance on state assessments by district to compare student achievement loss across 29 states. The professors used results from the National Assessment of Educational Progress, a test taken in every state, to compare States’ different definitions of proficiency.

The study found that achievement loss in math was larger in urban districts than rural districts but achievement loss in reading was larger in rural districts than urban districts. The study also found that that achievement loss was larger in higher poverty districts and that, within states, achievement loss was larger for districts that spent more time in remote instruction. In an interview, one of the lead authors said that “the average rural district fared better than the average urban district.” Another expert suggested that limited “out-of-school learning opportunities” like “literacy programs, summer learning options and libraries” may have contributed to achievement loss in reading for rural districts. The study used the assessment scores of students in third through eighth grade from around 4,000 schools.

Because achievement loss varied widely among districts that spent the same amount of time in remote learning, researchers did not conclude that school closures were a primary factor for learning loss. The study’s authors indicated that additional states will be added as they report their scores in the coming weeks.

[Information on the study is available here.](https://educationrecoveryscorecard.org/)

Resources:

Asher Lehrer-Small, “‘Scorecard’ of 4,000 Schools Shows Rural Districts Fared Better in Math, Worse in Reading Than Urban, Suburban Peers”, *The74*, November 2, 2022.

Author: ASB

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of Brustein & Manasevit’s upcoming virtual trainings. Topics cover a range of issues, including COVID-19 related issues, grants management, the Every Student Succeeds Act, special education, and more. To view all upcoming virtual training topics and to register, visit* [*www.bruman.com/virtualtrainings/*](http://www.bruman.com/virtualtrainings/)*.*

***The Federal Update has been prepared to inform Brustein & Manasevit, PLLC’s legislative clients of recent events in federal education legislation and/or administrative law. It is not intended as legal advice, should not serve as the basis for decision-making in specific situations, and does not create an attorney-client relationship between Brustein & Manasevit, PLLC and the reader.***

© Brustein & Manasevit, PLLC 2022

Contributors: Julia Martin, Kelly Christiansen, Andy Ball

Posted by the California Department of Education, November 2022

[www.bruman.com](http://www.bruman.com/)