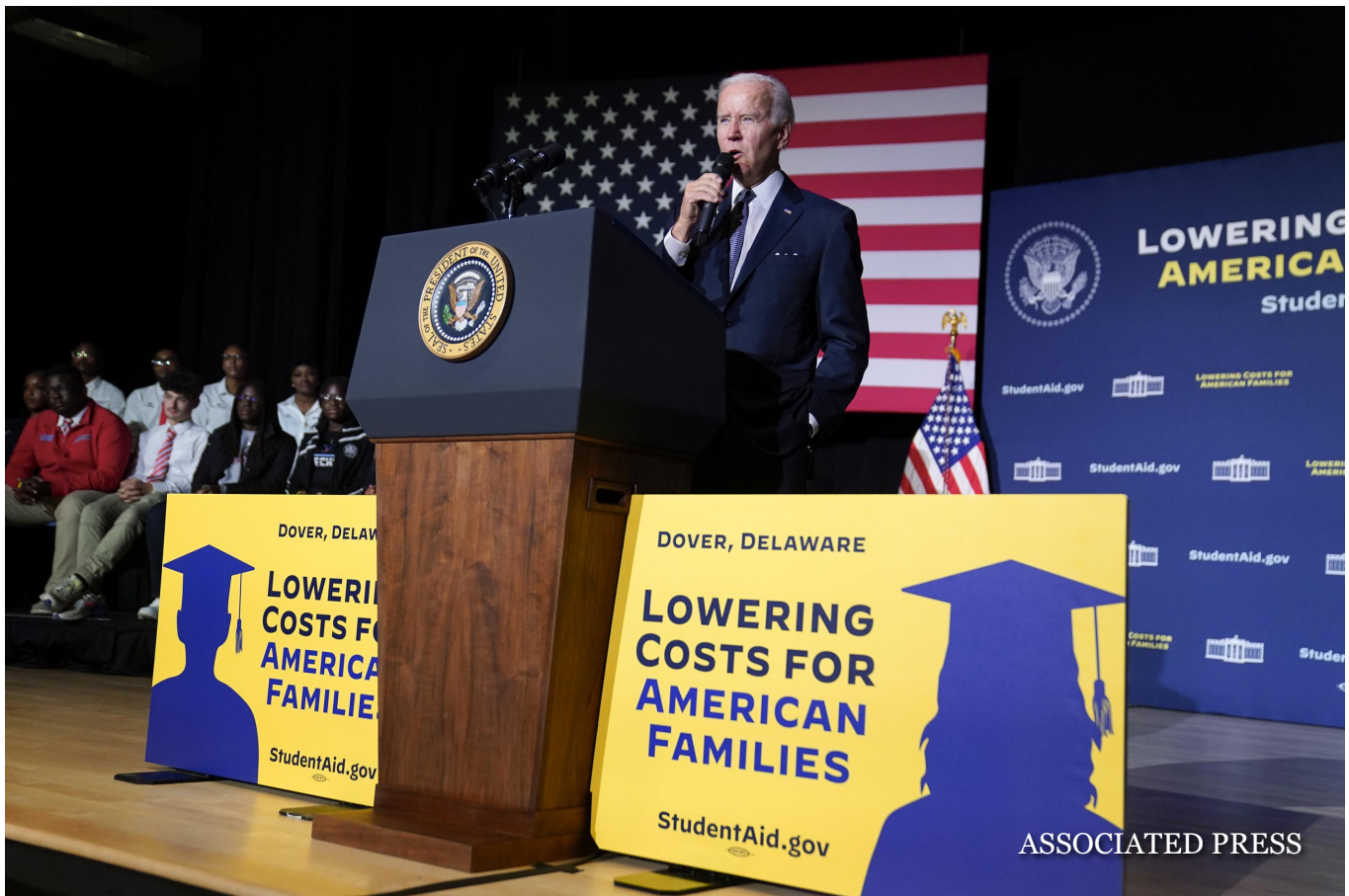




NATIONAL JOURNAL

# Supreme Court ruling forced Biden to improvise on student debt plans. Is it working?

His efforts have yielded \$168 billion in relief for some 4.8 million Americans, compared to the \$400 billion in his original plan to help as many as 43 million.



FILE - President Biden speaks about student loan debt relief at Delaware State University, Oct. 21, 2022, in Dover, Delaware. (AP Photo/Evan Vucci, File)

## Melos Ambaye

🕒 Aug. 5, 2024, 6 p.m.

President Biden is still trying to deliver on his campaign promise of canceling student loan debt, circumventing a Supreme Court decision last year that ruled his administration's sweeping student debt relief program exceeded its executive authority.

The Supreme Court last summer struck down Biden's plan in a 6-3 decision, ruling in favor of six GOP-led states contending the administration overstepped its authority.

The president's original plan would have forgiven up to \$20,000 in student loan debt for borrowers with annual incomes below \$125,000.

Stymied by the high court, the president and his advisers opted for more targeted but—they hope—legally tenable ways to provide relief.

After the ruling, Biden announced he would pursue new action through lowering monthly payments of borrowers and negotiated rulemaking, using the Education Department's authority under the [Higher Education Act](https://www.govinfo.gov/content/pkg/COMPS-765/pdf/COMPS-765.pdf). (<https://www.govinfo.gov/content/pkg/COMPS-765/pdf/COMPS-765.pdf>)

“No President has fought harder for student debt relief than President Biden, and he's not done yet,” the White House said in a [fact sheet](https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/fact-sheet-president-biden-announces-new-actions-to-provide-debt-relief-and-support-for-student-loan-borrowers/) (<https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/fact-sheet-president-biden-announces-new-actions-to-provide-debt-relief-and-support-for-student-loan-borrowers/>) last summer. “President Biden will not let Republican elected officials succeed in denying hardworking Americans the relief they need.”

So far, his efforts have provided \$168 billion in relief to nearly 4.8 million Americans with student debt, compared to the \$400 billion in relief his original plan would have provided to about 43 million

Americans.

Advocates say his administration has been creative in devising ways to provide relief to needy and deserving people. But critics question the fairness of bailing out some students with tax dollars but not those who either opted not to go to college or who already paid their debt.

Some say Biden's student loan strategies following the ruling are not attempts to circumvent the decision with new policies but rather attempts to enhance existing debt relief programs through targeted initiatives.

Biden's efforts are "regulatory and administrative improvements to debt relief programs that have long been problematic for borrowers to navigate, which had caused many borrowers to be denied relief that they were legally entitled to," said Adam Minsky, a lawyer who represents students burdened with heavy student loan debt.



DAILY

## How the Supreme Court's decision to overturn *Chevron* could affect public schools and higher education

High school sports, programs for students with disabilities, and college-debt forgiveness are among the areas likely to be affected.

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(/s/725747)

Some of Biden's alternative strategies for debt relief have moved forward, while others have faced a slew of legal challenges. Here's a look at the main initiatives.

## **SAVE Plan**

Last August, the Biden administration unveiled a new student loan repayment plan, [Saving on a Valuable Education](https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/)

(<https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/>), to lower monthly payments for borrowers.

SAVE calculates the payment plans of borrowers based on their family size and income, discounting the loan balance. The plan prevents balances from increasing due to unpaid interest and forgives remaining balances, allowing borrowers to manage their debt and repay loans faster.

The income-driven repayment plan cuts undergraduate student loan debt in half by lowering borrowers' payment amounts from 10 percent of discretionary income to 5 percent. It also offers debt forgiveness to borrowers after 10 years of payments if their loans were originally \$12,000 or less, with each additional \$1,000 borrowed adding a year until forgiveness.

The administration “is pursuing an alternative path to deliver debt relief to as many student loan borrowers as possible, as quickly as possible in the wake of the Supreme Court’s decision on the Administration’s student debt relief plan,” the White House said in a [statement](https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/) last August.

Congressional Republicans were quick to denounce the SAVE Plan, expressing concerns over the plan’s constitutionality and hefty price tag. The lawmakers say it's unconstitutional for Biden to spend billions of taxpayer dollars not appropriated by Congress. The plan could cost upwards of \$500 billion over its 10-year budget.

Sen. Bill Cassidy, the top Republican on the Health, Education, Labor & Pensions Committee, and 14 of his GOP colleagues introduced a [Congressional Review Act resolution](https://www.help.senate.gov/imo/media/doc/idr_cra_text.pdf) to overturn President Biden's IDR rule.

“Once again, Biden’s newest student loan scheme only shifts the burden from those who chose to take out loans to those who decided not to go to college, paid their way, or already responsibly paid off their loans,” Cassidy said in a September [statement](#)

(<https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-thune-cornyn-colleagues-introduce-cra-to-overturn-bidens-newest-student-loan-scheme>). “Our resolution protects the 87 percent of Americans who don’t have student debt and will be forced to shoulder the burden of the President’s irresponsible and unfair policy.”

NJ

PRESENTATION CENTER

**After losing in *Biden v. Nebraska*, the Biden administration turns to the Higher Education Act**

**BACKGROUND**

- The White House is planning to use the Secretary of Education's authority under the Higher Education Act of 1965 (HEA) to open an alternative path to debt relief for working and middle-class borrowers; the HEA controls federal financial aid mechanisms including student loans and allows the Secretary of Education to cancel and/or decrease debt for certain groups
- While more plan details are still unavailable, the target groups for this new plan are: borrowers who owe more than the initial loan amount, borrowers with loans that went into repayment 25+ years ago, borrowers with loans from career training programs that led to spurious debt loads or provided insufficient earnings, and borrowers who are eligible for forgiveness under other programs but have not applied

**NEXT STEPS**

- The Biden Administration is currently revising HEA provisions under a "negotiated rulemaking" process, which is expected to last into 2024
  - Officials met on November 6 to continue finalizing plan details
- The Department of Education is also meeting to continue revising the HEA provisions to determine how the Secretary can waive debt
  - Negotiators in the rulemaking process have two more meetings scheduled for November and December

**POSSIBLE CHALLENGES**

- While negotiated rulemaking processes can avoid potential litigation against any policy created because all parties are involved in negotiation, it can also create other issues
  - When a rule is proposed through negotiated rulemaking, it must be made available for public comment, doing so could cause a rule change and unexpected conflict
- While student loan forgiveness is viable under the HEA, most legal experts and scholars agree that the chances of another court challenge are high
- Further, a GOP win in the 2024 presidential election would almost certainly end all prospect of student debt relief

SOURCE: THE WHITE HOUSE, "THE HIGHER EDUCATION ACT," PRESENTATION CENTER 11/20/23

## PRESENTATION

### Student loan debt forgiveness

([md/682095](https://md/682095))

The Senate rejected the CRA resolution in November, prompting Republican-led states to sue Biden over his student loan repayment plan.

In June, separate court rulings by two federal judges in Kansas and Missouri prevented the Education Department from implementing parts of SAVE. The Kansas ruling prohibited the Education Department from lowering the monthly payments of borrowers, while the Missouri decision ruled the department did not have the authority to implement the SAVE program.

The administration countered by unfurling a piecemeal approach that provides targeted debt relief to specific groups.



“We will never stop fighting to lower monthly payments and help borrowers get out from under the burden of student debt—no matter how many times Republican elected officials try to stop us,” White House press secretary Karine Jean-Pierre [wrote](#)

(<https://x.com/PressSec/status/1805614372678447122>) in June on X.

The Biden administration in June successfully appealed the Kansas ruling in the U.S. Court of Appeals for the Tenth Circuit, allowing it to resume efforts to lower borrowers’ payment amounts. But in July, the Eighth Circuit Court of Appeals sided with Missouri’s attorney general, completely suspending the SAVE Plan.

Republican lawmakers celebrated last month's appeals court ruling.

“Turning a blind eye to fiscal responsibility and the intent of Congress to keep a campaign promise—a promise you had no authority to make—will hurt American education and U.S. economic competitiveness,” Rep. Virginia Foxx, chair of the House Committee on Education and the Workforce, said in a [statement](#)

([https://edworkforce.house.gov/news/documentsingle.aspx?](https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=411802#:~:text=%E2%80%99CMr.,%2Dof%2Dcontrol%2Onational%20debt.)

[DocumentID=411802#:~:text=%E2%80%99CMr.,%2Dof%2Dcontrol%2Onational%20debt.](https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=411802#:~:text=%E2%80%99CMr.,%2Dof%2Dcontrol%2Onational%20debt.)) directed toward Biden.

Education Secretary Miguel Cardona said last month that borrowers will be placed in a temporary, interest-free forbearance account while the Biden administration tries to defend the SAVE program in court.



SAVE has thus far canceled over \$5.5 billion of student debt for the more than 400,000 borrowers signed up for the plan.

Roughly 8 million borrowers have been placed on forbearance and will not be required to make payments, but they will not receive credit towards debt cancellation.

## **Different IDR Plan**

The Education Department says borrowers still have other options to receive student loan forgiveness while the SAVE Plan is blocked.



DAILY

### **After 'botched' rollout of federal student-aid system, Biden administration aims to fix the relaunch**

Glitches in FAFSA system have driven down college enrollment as uncertainty over available aid has made thousands hesitant to pursue higher education.

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(/s/725538)

Borrowers can switch to a different IDR plan, including Pay As You Earn, Income-Based Repayment, and Income-Contingent Repayment. Payments made on the plans can count towards IDR forgiveness.

But borrowers could experience price hikes on their payments if they switch to a different plan.

“We encourage borrowers to look at the specific terms of each IDR Plan to make the best choice for their individual situation,” the Education Department said in a [statement](https://www.ed.gov/Save) (<https://www.ed.gov/Save>) last month.

“Different IDR plans may require higher monthly payments than the SAVE/REPAYE Plan does, and—in the case of some IDR plans—borrowers who later leave them may face interest capitalization.”

Borrowers can also continue to apply for SAVE, but the department says the terms of the plan are still subject to the outcome of ongoing litigation.

Online applications for an IDR plan are temporarily unavailable because of the legal stay. Interested borrowers can submit a PDF application to their loan servicer’s website.

“Borrowers should expect a lengthy delay in processing of applications, especially for borrowers applying for SAVE/REPAYE,” the department said. “We do not currently have an estimate of how long this will take.”

## **Public Service Loan Forgiveness**

Some borrowers also may be able to receive Public Service Loan Forgiveness credit.

The PSLF program forgives the remaining balance of federal student loans for eligible borrowers who work full-time in public service and also make 120 qualifying payments.

The Department of Education [says](https://www.ed.gov/Save) (<https://www.ed.gov/Save>) borrowers may be eligible to “buy back months of PSLF credit for time spent in forbearance as a result of the court’s administrative stay.”

To qualify for credit, borrowers must submit a buyback request and make an additional payment of at least what they would have owed under an IDR plan during the months they want to buy back.

Payments made on PAYE, IBR, or ICR can also count towards PSLF forgiveness.

## **Proposed Rules**

The Biden administration on Wednesday [said](https://www.ed.gov/news/press-releases/biden-harris-administration-takes-next-step-toward-additional-debt-relief-tens-millions-student-loan-borrowers-fall) (<https://www.ed.gov/news/press-releases/biden-harris-administration-takes-next-step-toward-additional-debt-relief-tens-millions-student-loan-borrowers-fall>) it will start emailing borrowers on Thursday with at least one outstanding federally held loan and give them the opportunity to opt out of potential upcoming debt relief.

Qualified borrowers are automatically opted in but have until Aug. 30 to contact their servicer to opt out of future relief.

The Education Department says the rules that would provide this relief are not finalized yet. In April, the Biden administration released a draft of proposed rules which would give the Education secretary the authority to grant debt relief to tens of millions of borrowers.

If finalized, the rules could bring the number of eligible borrowers eligible for partial or full debt relief to over 30 million. Eligible borrowers would not automatically receive debt relief unless they opted out this month.

The department says the proposed rules would allow the administration to build upon its existing efforts.

The rulemaking process is set to conclude this fall. 