With the payment pause ending this fall, 45 million student loan borrowers across the country will be scrambling to figure out how to manage their federal student loans when payments come due this fall.

The Supreme Court’s June 30th ruling striking down President Biden’s federal student loan cancellation plan dealt a major blow to these borrowers, many of whom believed their loans would be completely or partially forgiven when the plan took effect.

For the last three years, borrowers have not had to make payments on loans held by the Department of Education (ED) and ED has stayed all involuntary collections.

However, everything changes this fall: on September 1st, interest will begin to accrue and in October, payments will be due. When repayments restart, many borrowers will face challenges, including adjusting to the massive changes during the payment pause as to the entities now servicing their student loans.
The student loan landscape looks different now from where it was before the Covid-19 Pandemic. Borrowers and advocates must act quickly to familiarize themselves with new time-limited and permanent changes to the student loan system that ED implemented during the pause.

This article discusses the 8 biggest changes in 2023 that will directly impact decisions and rights for many student loan borrowers:

1. The Supreme Court on June 30th stuck down President Biden’s student loan cancellation plan.
2. The payment pause ends in September 2023.
3. Time-limited loan flexibilities are available to borrowers: Fresh Start for borrowers who were in default before the pandemic and a one-time Income-Driven Repayment account adjustment.
4. A new Income-Driven Repayment plan, the SAVE plan, will go into effect on July 1, 2024 and aspects will be partially implemented by the time repayment restarts.
5. July 1, 2023, regulatory changes are in effect regarding interest accrual, closed school discharges, borrower defense, total and permanent disability discharges, false certification discharges, and public service loan forgiveness.
6. Student loan cancellation and forgiveness won’t result in federal tax bills through December 31, 2025.
7. New Department of Justice policy makes discharges of student loans in bankruptcy more likely.
8. A new rule restricts when schools participating in the federal student aid program may use mandatory arbitration and class action waivers to keep students out of court.
First Big Change: Supreme Court Strikes Down President Biden’s Student Loan Cancellation Plan

In a 6-3 opinion along ideological lines, on June 30th the Supreme Court held in Biden v. Nebraska, 2023 WL 4277210 (U.S. June 30, 2023), that the HEROES Act did not give the President authority to implement his loan relief package offering borrowers earning less than $125,000 cancellation of up to $10,000 of
federal loan debt and up to $20,000 for Pell grant recipients.

The Court ruled that the cancellation exceeded the HEROES Act’s loan modification and waiver authority, and that the significance of the relief program implicated the Major Questions Doctrine, a recently developed doctrine that the Court has used to limit administrative authority.

Consequently, the decision is narrowly tailored to this specific application of the HEROES Act, and does not discuss other Higher Education Act loan cancellation authority or other loan modifications or waivers under the HEROES Act.

Justice Kagan wrote a powerful dissent criticizing the Court for finding that standing was met and the opinion’s reasoning more generally.

In response to the Supreme Court decision, the Biden administration has announced that it will pursue debt relief under alternate authority, though it is expected to take some time and it is unclear what the terms of relief will be.

To do so, the ED is initiating a negotiated rulemaking to develop proposed regulations regarding the use of the modification, waiver, or compromise authorities under section 432(a) of the Higher Education Act (20 U.S.C. § 1082(a)).

**ED will convene a public hearing regarding this negotiated rulemaking on July 18, 2023, from 1:00 PM to 4:00 PM EST, and written comments may be submitted until July 20th.**

The Biden plan would have reduced the number of federal student loan borrowers by half.

Instead, no student loan borrower will receive this relief and they will be obligated to repay the full amount of their loan when repayment restarts in September.

Many of these borrowers will be confused, having relied on President Biden’s assertion that they would receive debt cancellation.

**Second Big Change: The End of the Payment Pause in September 2023**

Over the course of the pandemic, payments on ED-held student loans were paused and interest accrual was temporarily stopped, first by the CARES Act and then by subsequent administrative actions.
For covered loans, periods in the payment pause accrued credit toward the Income-Driven Repayment (IDR) plans and toward Public Service Loan Forgiveness (PSLF).

However, the payment pause will end this fall. The debt ceiling negotiations resulted in the Fiscal Responsibility Act of 2023, which, among other things, requires that the payment pause conclude at the end of August. See Public Law No. 118-5, div. B, tit. IV, § 271 (2023).

The Department has not yet released complete information regarding how it plans to return borrowers to repayment and what flexibilities it will offer borrowers during what will be a confusing and challenging time for many.

However, ED’s website currently states that interest will begin accruing September 1, 2023, and student loan payments will be due starting in October.

ED officials have said that borrowers will receive a billing statement that will include the payment amount and the due date well in advance of when payments are due. Borrowers should keep watching ED’s website for more information.

In light of the Supreme Court’s decision to strike down President Biden’s cancellation plan, ED has announced that it will provide borrowers with a 12-month “on-ramp” when repayments restart.

From October 1, 2023, until September 30, 2024, borrowers who miss payments will not be considered delinquent, will not have those missed payments reported to credit bureaus, and will not have their debt placed in default or reported to credit bureaus.

Interest will continue to accrue during the on-ramp period, but it will not be capitalized.

However, borrowers should still begin planning for the end of the payment pause now:

Many borrowers’ loan servicers changed during the payment pause, meaning they will need to communicate with and submit payments to a new company.

Borrowers should log into their account on studentaid.gov and (1) check on who is servicing their loans, (2) verify that their contact information is correct, and (3) check their current loan information, including what payment plan they are enrolled in and whether any of their loans are in default. Borrowers should update their
contact information with their loan servicer, either online or by phone.

Borrowers whose loans are in default should consider using the time-limited Fresh Start program (discussed at #3, below) to re-enter repayment in good standing.

Borrowers should assess whether they have a right to a federal loan discharge. Many of the rules governing these programs will have changed to benefit borrowers and will now be in effect (discussed at #5, below).

Borrowers worried about their ability to afford loan payments should consider enrolling in an Income-Driven Repayment plan (IDR), which calculates a borrower’s monthly repayment amount based on their income and family size.

Most low-income borrowers on IDR plans have low or $0 monthly payments. See NCLC’s Student Loan Law § 3.3 for more information about IDR repayment plans available to federal loan borrowers.

Currently, borrowers can sign up for an IDR plan without having to submit income documentation and can do so on studentaid.gov or by calling their student loan servicer.

If an IDR plan isn’t available to the borrower or payments are still unaffordable, the borrower may consider using a temporary deferment or forbearance to postpone payment.

See NCLC’s Student Loan Law §§ 4.3, 4.4 (describing the different types of forbearances and deferments). Generally, forbearance and deferment are only advisable where IDR is either unavailable or unaffordable for the borrower.

For the latest updated information, go to NCLC’s new Student Loan Borrower Assistance website.

Third Big Change: New Time-Limited Programs: Fresh Start for Defaulted Loans and an IDR Adjustment

As borrowers exit the payment pause, they will have time-limited opportunities, including Fresh Start for borrowers in default before the pandemic and a one-time Income-Driven Repayment account adjustment.
In August 2022, ED announced its Fresh Start initiative, which provides a valuable but time-limited pathway out of default.

Fresh Start allows borrowers to request that their loans be removed from default and be put back into repayment status improving their credit, protecting them from wage garnishment and other involuntary collections, and restoring their eligibility for federal student aid and other federal loans as well as for improved repayment options.

See NCLC’s Student Loan Law § 7.0 for a detailed discussion of the Fresh Start Program.

Most federal student loans currently in default are eligible for a Fresh Start, including Direct Loans, most FFEL loans (both ED-held and commercially held), and Perkins loans held by ED.

Fresh Start only applies to loans that entered default before the payment pause (i.e., before March 2020). Commercially held FFEL loans that defaulted during the Covid-19 payment pause will be taken out of default automatically, and borrowers will not have to request a Fresh Start for such loans.

Loans that go into default after September 1, 2023, are not eligible for Fresh Start.

The Fresh Start program is time limited: borrowers must sign up before August 31, 2024.

Until then, collection activity will continue to be suspended for all Fresh Start eligible borrowers, but those who do not sign up by the deadline will face all the consequences of default, including potential wage garnishment, tax refund offset, or Social Security offset, beginning September 1, 2024. See NCLC’s Student Loan Law § 6.3 on the consequences of default.

Those signing up for a Fresh Start will be removed from default and upon request, placed in an Income-Driven Repayment (IDR) plan that limits monthly payments based on income.

Enrollment in IDR could result in low or $0 monthly payments for many low-income borrowers. When signing up for an IDR plan, borrowers will have to provide income
information, so it is helpful but not required to look up in advance AGI from their most recent federal tax return (line 11 of IRS Form 1040).

**The process to sign up for Fresh Start is free, takes less than 10 minutes, and can be done over the phone, online, or by mail.**

Borrowers with Direct Loans or other ED-held loans can sign up with ED’s Default Resolution Group (DRG):

- Online: go to [myeddebt.ed.gov](http://myeddebt.ed.gov) and log in to your account or create an account.
- Phone: Call 1-800-621-3115 (TTY 1-877-825-9923).
- Mail: P.O. Box 5609, Greenville, TX 75403. Include a name, Social Security number, date of birth, and “I would like to use Fresh Start to bring my loans back into good standing.”

Borrowers with FFEL loans should contact their guaranty agency to have their loans transferred to the DRG, which will then remove their loans from default and assign the loans to a non-default servicer.

Borrowers should call DRG at 1-800-621-3115 if they do not know which guaranty agency holds their loans.

For more on the Fresh Start Program, see this video of a discussion for legal aid attorneys with the Federal Student Loan Ombudsman describing the nuts and bolts of the program. NCLC also has a FAQ about the program [here](http://nclc.org) and Fresh Start is also examined at NCLC’s Student Loan Law § 7.0.

**—Income-Driven Repayment (IDR) Account Adjustment**

After ED discovered mass mismanagement had led millions of borrowers to be in repayment despite having their loans for more than 20 or 25 years (the points at which borrowers in IDR plans can have their loans canceled), it announced that it would engage in an automatic one-time adjustment of borrowers’ accounts to correct for prior errors in the management of IDR programs.

This one-time adjustment will put millions of borrowers closer to IDR and Public Service Loan Forgiveness.
Under the account adjustment, the following time (since July 1, 1994) will now be automatically counted as IDR-qualifying months, even if the borrower was not enrolled in an IDR plan at the time:

- Any months in a repayment status, regardless of the payments made, loan type, or repayment plan;
- 12 or more months of consecutive forbearance or 36 or more months of cumulative forbearance;
- Months spent in economic hardship or military deferments after 2013;
- Months spent in any deferment (except in-school deferment) prior to 2013; and
- For consolidation loans, any time in repayment for the loans before they were consolidated.

The following periods still will not count as IDR-qualifying months:

- Time in default if the borrower defaulted on their loans before March 13, 2020;
- In-school deferments;
- Shorter periods of forbearance and some deferments after 2013;
- Months where the borrowers’ loans were subject to a court-judgment.

Generally, borrowers with 20 years (if they only borrowed loans for undergraduate study) or 25 years (if they borrowed loans for graduate school) in repayment will have their loans automatically canceled.

Borrowers who have not yet reached the 20- or 25-year mark will still bank the newly credited time, meaning that when repayment restarts, they will be closer to IDR cancellation and can enroll in an IDR plan and continue accruing qualifying time towards cancellation.

All Direct Loans and FFEL or Perkins loans owned by ED are eligible for the account adjustment (including Parent PLUS loans!) and will be automatically adjusted. These loans have received the COVID-19 payment pause since March 2020.

However, the following loan types will be excluded from the IDR account adjustment unless the borrower consolidates them into a Direct Consolidation Loan before December 31, 2023:

- Commercially held FFEL loans;
- Perkins Loans that are held by a school;
- Health Education Assistance Loan (HEAL) loans.
Borrowers who have loans with different periods of time in repayment should also consider consolidating those newer and older loans together so that the Direct Consolidation Loan is credited with the longest period of repayment that accrued on the older loans before consolidation.

More information about the IDR account adjustment is available [here](#).

**Importantly, Parent PLUS loans can receive credit towards both IDR and PSLF if the borrower (i.e., the parent) worked for a qualifying public service employer during the time that now counts as IDR qualifying time.**

Parent PLUS borrowers were excluded from the PSLF waiver but can now act to receive those benefits.

If their loans are not yet at cancellation, those borrowers can continue accruing qualifying repayment towards PSLF either by making payments in a standard repayment plan or by consolidating the Parent PLUS loan into a Direct Consolidation loan, which is eligible for the Income Contingent Repayment plan—the most expensive of the IDR plans.

More information regarding Parent PLUS borrowers, the IDR account adjustment, and the PSLF is available [here](#) and [here](#). Detailed information about IDR is available at [NCLC’s Student Loan Law § 3.3](#).

**Fourth Big Change: A New IDR Plan Will Go into Effect on July 1, 2024 and Aspects Will Be Partially Implemented by the Time Repayment Restarts**

In light of the Supreme Court ruling, the Biden Administration released an [unofficial copy](#) of its new Income-Driven Repayment plan.

This IDR plan amends the existing REPAYE Plan and renames it the Saving on a Valuable Education plan or SAVE plan.

Borrowers who are enrolled in REPAYE will automatically be enrolled in the SAVE plan. While the plan will not be fully implemented until July 1, 2024, aspects of the plan are designated for early implementation on July 30, 2023, before repayment restarts.
A few key aspects of that plan are described here, but the plan will be described in more detail in subsequent NCLC publications.

Borrowers who have Direct Loans for their own education are eligible for the new SAVE plan.

FFEL borrowers are not eligible for the SAVE plan unless they consolidate their loans into a new Direct Consolidation Loan. The pros and cons of consolidating federal loans are discussed in NCLC’s Student Loan Law § 1.4.1.3.

When the SAVE plan is fully implemented after July 1, 2024, it will provide a process to provide borrowers with credit for the weighted average of qualifying time that accrued on their loans before they were consolidated.

Parent PLUS loans are not eligible for a SAVE plan unless they are consolidated into a Consolidation Loan, at which point they are only eligible for the Income-Contingent Repayment plan—the least generous IDR plan. All of the IDR plans are discussed in NCLC’s Student Loan Law § 3.3.

The new SAVE plan will increase the amount of income exempted from calculating a borrower’s monthly payments, meaning that borrowers’ payments will be reduced from what they would otherwise be for the other IDR plans.

Before the payment pause ends, the amount of income that will be protected from payments under the SAVE/REPAYE plan will increase from 150% of the Federal Poverty Line to 225% of the Federal Poverty Line.

That means that until July 1, 2024, monthly payments will be 10% of only that portion of the borrower’s income above 225% of the Federal Poverty Line. When the plan is fully implemented after July 1, 2024, monthly repayments will be the following:

- 5% of a borrower’s income above 225% of the Federal Poverty Line if they only have undergraduate loans;
- 10% of a borrower’s income above 225% of the Federal Poverty Line if they only have graduate loans;
- A weighted average of between 5% and 10% of the borrower’s income above 225% if they have both undergraduate and graduate loans.
In addition, before the payment pause ends, ED will stop charging borrowers enrolled in the SAVE/REPAYE plan any monthly interest that is not covered by the borrower’s monthly payment. ED will also early implement another change: married borrowers who file their taxes separately will no longer be required to include their spouse’s income as part of their own income when calculating their monthly repayment amount.

When the plan is fully implemented after July 1, 2024, it will also change the repayment period before forgiveness for some borrowers.

If a borrower has an original principal balance of $12,000 or less on all loans under the SAVE/REPAYE plan, they will receive forgiveness after 10 years in repayment. ED will add an additional year of repayment for each additional $1,000 borrowed above that level, up to a maximum of 20 or 25 years.

Borrowers who only borrowed undergraduate loans with an original principal above $22,000 or more will receive forgiveness at 20 years, whereas borrowers who borrowed at least one graduate loan being repaid under the SAVE/REPAYE plan that had an original principal amount of $27,000 or more will receive forgiveness at 25 years.

Lastly, when these new IDR regulations are fully implemented after July 1, 2024, it will create important new options for borrowers in default.

Borrowers in default will be eligible for a Income-Based Repayment (IBR) plan, and ED will automatically enroll borrowers in an IDR plan with the lowest payment if the borrower has provided ED with approval to use their tax data and they are 75 days’ delinquent or are in default but are not subject to wage garnishment or offset.

ED will also create a new pathway out of default for some borrowers.

If a borrower can provide the Secretary with information that shows they would have been eligible for a $0 payment under an IDR plan at the point when the loan defaulted, the Secretary will no longer consider the borrower in default.

However, the unofficial final rule states that ED will not reverse the history of defaults or any collection that occurred before the borrower provided their income information.
Fifth Big Change: July 1, 2023, Rule Changes to Statutory Discharge Programs and Interest Capitalization Rules

New regulations governing statutory discharges as well as the rules surrounding interest capitalization will become effective on July 1, 2023.

Generally, these changes will make more borrowers eligible for a discharge and will make it easier for many borrowers to obtain relief.

As a result, this summer is a good time for borrowers to assess whether they are now eligible for a statutory discharge. This section summarizes the changes that will go into effect concerning interest capitalization and for five loan discharge or forgiveness programs.

—New Rules Will Capitalize Interest on Federal Loans Less Frequently

Many borrowers look on in shock as their student loan balance balloons over time due to capitalized interest. Effective July 1, new rules eliminate all instances of interest capitalization that are not required by statute. Under the new rules, interest will no longer be capitalized in the following instances:

- When the borrower first enters repayment;
- After a forbearance;
- When a borrower enters default;
- When switching out of (or not recertifying on time for) the Pay As You Earn (PAYE), Revised Pay As You Earn (REPAYE), or Income-Contingent Repayment (ICR) plan;
- During periods of negative amortization (i.e., when the borrower’s monthly payments are less than the amount of interest charged each month) in the Income-Contingent Repayment Plan or the alternative repayment plan.

Forbearances and deferments are discussed in NCLC’s Student Loan Law §§ 4.3, 4.4. The IDR repayment plans are discussed in NCLC’s Student Loan Law § 3.3.

—It Is Now Easier to Discharge Student Loans Based on a Total and Permanent Disability
Effective July 1, new rules make it easier for borrowers to discharge their federal loan debt if they are disabled and cannot work.

Even before the new rules, ED automatically granted a discharge to those the Social Security Administration (SSA) classified as Medical Improvement Not Expected (MINE) and where the VA sent data to ED showing that a borrower is unemployable because of a service-connected disability.

The new rules expand discharge eligibility—including automatic discharges—for borrowers based on their status with the SSA, and will now provide discharges to:

- SSA beneficiaries who have an onset of disability date at least five years ago, or have been receiving SSDI benefits or SSI based on disability for at least five years;
- SSA beneficiaries with conditions on the SSA’s List of Compassionate Allowances;
- Eligible SSA beneficiaries currently receiving retirement benefits and who met the requirements for a disability discharge prior to retirement;
- Borrowers who qualify for SSDI or SSI based on disability and the borrower’s next continuing disability review has been scheduled at 3 years (borrowers within the SSA Medical Improvement Possible category (MIP));
- Borrowers that qualify for SSDI or SSI based on disability if their next continuing disability review has been scheduled between 5 and 7 years (MINE category).


For those not covered by an automatic discharge and who apply for a discharge, the new rule allows nurse practitioners, physician’s assistants, and osteopathic doctors—not just medical doctors—to attest that a borrower is disabled, making it easier for borrowers to get proof of their disability.

See 34 C.F.R. § 685.213(b)(2)(i)–(ii). In addition, under the new rule, borrowers will not be subject to the burdensome three-year, post-discharge income monitoring after they receive a discharge and will only have their loans reinstated if they borrow new federal loans within 3 years of applying for a discharge. For more on the disability discharge, see NCLC’s Student Loan Law § 10b.2.

—New Rules Making It Easier for Borrowers to Obtain Borrower Defense Relief
Effective July 1, new rules increase access to relief for borrowers who were harmed by deceptive and abusive school recruiting and enrollment practices.

See 34 C.F.R. § 685.401. Unlike the prior rules, the new rules apply to all pending and future borrower defense applications, regardless of when the loan was issued. And under the new rules, borrowers may apply for relief at any time, even for school attendance many years ago.

The new rules expand the types of misconduct that make borrowers eligible for relief. Relief will now be available for the following:

- A substantial misrepresentation or omission of fact that affected the borrower’s decision to attend or continue attending their school—see NCLC’s Student Loan Law § 10.6.5.4;
- “Aggressive and deceptive recruitment conduct or tactics”—see NCLC’s Student Loan Law § 10.6.5.5;
- A breach of contract by the school that failed to perform obligations that were “undertaken as consideration or in exchange” for the borrower’s decision to attend the institution, for the borrower to take out a federal loan, or for funds disbursed in connection with federal loans—see NCLC’s Student Loan Law § 10.6.5.6;
- A favorable judgment (obtained by the borrower or the government) that was “based on the institution’s act or omission relating to the institution’s making of [a] covered loan, or the provision of educational services for which the loan was provided”—see NCLC’s Student Loan Law § 10.6.5.7;
- The Secretary of Education sanctioned or otherwise took adverse action against an institution by denying the institution’s application for recertification or revoking the institution’s provisional program participation agreement based on acts or omissions that could give rise to a borrower defense claim—see NCLC’s Student Loan Law § 10.6.5.8.

To approve a borrower defense claim, ED must conclude that the act or omission occurred and that it caused detriment to the borrower that warrants relief. See NCLC’s Student Loan Law § 10.6.5.9.

Once the borrower’s application is “materially complete,” ED will put all the borrower’s loans—including loans to attend other schools—into forbearance and will suspend all collection activities until ED adjudicates the borrowers’ claim.
See 34 C.F.R. § 685.403(d); 87 Fed. Reg. 65,904, 65,941-65,942 (Nov. 1, 2022). If ED does not resolve the claim within 3 years, the applicable loan will become unenforceable.

If a borrower’s claim is granted, the loan taken out to attend that school will be discharged, the borrower will receive a refund of all payments made on that loan, and ED will delete all negative credit history associated with the loan and will restore the borrower’s federal aid eligibility.

ED will not offer partial discharges, so a determination will be made to offer either complete relief or no relief.

The new rules allow state agencies and legal aid organizations to submit borrower defense claims on behalf of groups of students who went to the same school. 34 C.F.R. § 685.402(c). See also NCLC’s Student Loan Law § 10.6.5.13.

Note: At least for the next few days this provision does not apply to certain Texas proprietary schools. On June 30, the Fifth Circuit granted a three week emergency injunction to the for-profit school trade association Career Colleges and Schools of Texas (CCST) delaying the effective date of the new discharge regulations, but only as to the association's member schools (Case No. 23-50489).

This appeal arose after the District Court in the Northern District of Texas that is hearing CCST's challenge to the new regulations denied a preliminary injunction (Case No. 1:23-cv-00433). Career Colleges and Schools of Texas have also moved the Fifth Circuit for a preliminary injunction pending appeal (Case No. 23-50491).

The rules are currently in effect for all other schools that are not members of CCST.

—Closed School Discharges Now Apply to More Students

Effective July 1, borrowers have new rights in pursuing a closed school discharge—that is a discharge if their school closed, and they did not finish their program or had left the school within 180 days of its closure.

Because these changes are retroactive for all FFEL, Direct, and Perkins Loans disbursed in part on or after January 1, 1986, it is likely that many borrowers who were previously ineligible for a closed-school discharge will become eligible.
ED estimates this will result in $3.42 billion in discharges for borrowers whose schools closed before 2023.

Students who do not complete their program at the closed school will be immediately eligible for a discharge, including students who transfer one or more credits to another school for any program outside of an approved teach-out.

See 87 Fed. Reg. 65,904, 66,005 (Nov. 1, 2022); NCLC’s Student Loan Law § 10.3.1. If a borrower accepts but does not complete a teach out, they will still be eligible for a discharge.

The closed school discharge is now open to more students because, effective July 1, it is available to a student who withdrew within 180 days of the closure date.

See 34 C.F.R. § 682.402(d)(1)(i) (FFEL); 34 C.F.R. § 685.214(d)(1)(i) (Direct Loan); 34 C.F.R. § 674.33(g)(4)(i) (Perkins Loan); NCLC’s Student Loan Law § 10.3.3.

The new rules also expand the definition of when a school is “closed” to include when a school stops the programs that enrolled the majority of its students.

The new rules also expand when ED may provide automatic discharges to borrowers eligible for a discharge. See NCLC’s Student Loan Law § 10.3.6.3. However, students can and should apply for a closed-school discharge at any time using an ED application form and using the application process described in NCLC’s Student Loan Law § 10.3.6.

Note: At least for the next few days this provision does not apply to certain Texas proprietary schools. See the discussion at the end of the section above concerning the borrower defense relief.

—Easier Path to a False Certification Discharge, Including Group Discharges

New rules that go into effect on July 1 provide an easier path for borrowers who obtained a loan after 1986 to obtain relief if their school falsely certified their eligibility for federal aid.

Now, the following are grounds for a discharge:

- The school falsified a student’s high school graduation status or receipt of a diploma;
The school falsified a non-high-school graduate’s ability to benefit from the program under the rules in effect when the borrowers’ loans were originated;
The school certified the eligibility of a student who was unable to meet state requirements for employment in the occupation for which the student trained;
The school obtained the loans without the borrower’s authorization;
The borrower is a victim of identity theft; and
In some circumstances, when a school falsified a student’s satisfactory academic progress.

The final rule expands the types of allowable documentation and clarifies the applicable dates for a discharge.

Significantly, ED will now accept from state attorneys general and nonprofit legal services representatives false-certification discharge requests for a group of students where a school engaged in widespread false-certification activities.

See 34 C.F.R. § 682.402(e)(16) (FFEL); 34 C.F.R. § 685.215(c)(10) (Direct Loan). False certification discharges are examined in detail at NCLC’s Student Loan Law § 10.4.

—Improvements to Public Service Loan Forgiveness

The Public Service Loan Forgiveness (PSLF) Program is available to borrowers who work full-time in public service jobs while they make 120 qualifying monthly payments on their federal loans.

After 10 years of qualifying time, ED cancels the remaining balance on the borrower’s loans. See generally NCLC’s Student Loan Law § 10a.2.

The new rules, effective July 1, reduce many of the barriers that have historically prevented borrowers from benefiting as expected, making permanent some of the elements of the temporary PSLF waiver that ended October 31, 2022.

More types of payment count towards forgiveness, including payments that are late, payments made in installments, and payments made in a lump sum. In addition, the new rules will count more types of deferment and forbearance towards forgiveness:

- Cancer treatment deferment;
- Military service deferment;
- Post-active-duty student deferment;
The rules create a process for borrowers to receive credit for periods of ineligible forbearance and deferment if they make payments equivalent to what they would have owed under an IDR plan (including credit for periods where the borrower would have owed $0 monthly payments).

Under the pre-existing rules, borrowers lost all progress toward PSLF when they consolidated their loans.

Under the new rules, borrowers who consolidate their loans will receive credit for a weighted average of qualifying time they had accrued on the underlying loans.

For example, a borrower with 60 qualifying payments on a $30,000 loan who forms a consolidation loan with another brand-new loan of $30,000 will have a new payment count of 30 payments on both loans.

The new rules also clarify which organizations are qualifying “public service” organizations, simplify what counts as “full time employment,” and formalize a reconsideration process for borrowers whose applications are denied. Further information on the permanent improvements made to PSLF regulations can be found here.

**Sixth Big Change: Student Loan Cancellation and Forgiveness Won’t Result in Federal Tax Bills Through December 31, 2025**

As a result of the American Rescue Plan Act of 2021, student loan cancellation currently does not count towards a borrower’s income for federal tax purposes—meaning that borrowers will not face increased federal income tax bills as a result of student debt cancellation or forgiveness (including the new rights to cancellation that recently went into effect).

Section 9675 of the law mandates that between December 30, 2020, and December 31, 2025, discharges of “any loan provided expressly for postsecondary educational
expenses”—including all types of federal loans, loans issued through state governments, loans issued by a school, and private student loans—are excluded from the borrowers’ income for federal tax purposes.

While some federal discharge and forgiveness programs, including Public Service Loan Forgiveness (PSLF) and Closed School Discharge, already protected borrowers from federal tax consequences, this broader protection is important for borrowers receiving loan discharges through programs that would otherwise result in potential tax liability, including Income-Driven Repayment cancellation or settlement and compromise cancellation, among others.

See generally NCLC’s Student Loan Law § 10d.2.

Borrowers should be aware that while this change alters their federal tax liability, a small number of states do not follow the Internal Revenue Code on this issue and may still count the cancellation towards the borrower’s income for state tax purposes.

**Seventh Big Change: New Policy Makes Discharges of Student Loans in Bankruptcy More Likely**

On November 17, 2022, the Department of Justice (DOJ) issued guidance in coordination with ED, that should allow bankruptcy debtors to be far more successful in obtaining hardship discharges of their ED-held loans.

The key to the new process is bankruptcy debtors completing an Attestation Form to seek the DOJ’s agreement to settle the debtor’s undue hardship discharge proceeding.

Another NCLC article explains the guidance’s significance, its scope and its limits, and then explains ten steps for completing the new form.

See also NCLC’s Student Loan Law § 11.4.

**Eighth Big Change: New Restrictions on School Arbitration and Class Action Waiver Requirements When School Participates in Direct Loan Program**
Effective July 1, 2023, a new rule prohibits institutions that participate in the Direct Loan Program from requiring borrowers to agree to mandatory arbitration or to waive the ability to participate in a class action lawsuit on claims concerning the school’s acts or omissions regarding the making of the Direct Loan or the school’s provision of educational services for which the Direct Loan was obtained.

Schools participating in the Direct Loan Program must agree that they will not:

1. Enter into a pre-dispute agreement where the school requires its students to arbitrate claims that could be the basis of borrower defense claims;
2. Rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim; or
3. Limit a student’s ability to initiate or join a class action against a participating school related to any aspect of a borrower defense claim.

See 34 C.F.R. § 685.300(e), (f); 87 Fed. Reg. 65,904, 66,066, 66,067 (Nov. 1, 2022). See also NCLC’s Student Loan Law § 14.4.6.

Broadly, a borrower defense claim is a claim of school misconduct relating to enrollment at the school, the provision of educational services, or the making of a federal loan that a borrower can assert to discharge their federal student loans and receive additional relief.

For purposes of this new rule, “borrower defense claim” is defined as any claim that could be asserted as a borrower defense claim under any of the standards promulgated in 1994, 2016, 2019, or 2022. See 34 C.F.R. § 685.300(i); 87 Fed. Reg. 65,904, 66,0667 (Nov. 1, 2022).

The new rule accomplishes its result by predicating a school’s continued participation in the Direct Loan program on their compliance with the arbitration and class action restrictions.

The rule requires that schools incorporate specific language into new or existing agreements with current or past students that clearly states that claims concerning the school’s acts or omissions regarding the making of the Direct Loan or the school’s provision of educational services for which the Direct Loan was obtained will not be subject to mandatory arbitration or limits on class actions.
If the school does not amend an existing agreement, it must provide a similar notice before the student receives “exit counseling,” stops attending the school, or files a complaint in court, or when the school provides its initial response to a demand for arbitration, whichever is earlier.

The new rule's mandatory agreement language requires that a court, not an arbitrator determine whether the student’s claim is regarding the making of a Direct Loan or the provision of educational services that can be compelled to arbitration, thus negating any contractual provision requiring that the arbitrator determine the enforceability of an arbitration requirement (called a delegation clause).

Note: At least for the next few days this provision does not apply to certain Texas proprietary schools. See the discussion at the end of the section above concerning the borrower defense relief.

**New Student Loan Resources**

The [Student Loan Borrower Assistance website](#) provides student loan borrowers with extensive information and assistance concerning every aspect of their loans. In late June 2023, NCLC released an extensive overhaul of the site, incorporating all the latest student loan changes and making it more helpful than ever.

[NCLC’s Student Loan Law](#) (6th ed.) (744 pp.) is the definitive legal treatise on federal and private student loans, available as a digital-only subscription or a print+digital subscription.

The digital version has been extensively updated and expanded since the print Sixth Edition.

It is now current for the new rules effective July 1, 2023, and for other recent law changes.

The treatise’s Seventh Edition will be released in a few months. Active print+digital subscriptions will receive the new print book at no charge and active digital subscriptions, of course, will have access to the new digital edition at no additional charge.
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