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# The Federal Update for August 18, 2023

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

Re: Federal Update

Date: August 18, 2023

[Legislation and Guidance 1](#_Toc143177431)

[ED Issues Guidance on SCOTUS Affirmative Action Ruling 1](#_Toc143177432)

[News 2](#_Toc143177433)

[Suit Challenging Biden’s $39B Student Debt Relief Plan is Dismissed 2](#_Toc143177434)

[ED Launches Back-To-School Safety Campaign 3](#_Toc143177435)

*Congress is currently in recess and will return to session following the Labor Day holiday.*

## Legislation and Guidance

### ED Issues Guidance on SCOTUS Affirmative Action Ruling

Following the Supreme Court decision issued in June holding that consideration of race in admissions at institutions of higher education (IHEs) is generally unconstitutional, the U.S. Departments of Justice (DOJ) and Education (ED) issued joint guidance this week for the higher education community on the Court’s decision and how IHEs can work to establish and maintain diverse student bodies moving forward.

While IHEs may no longer consider race as its own factor in the admissions process, ED says there may still be circumstances where a student’s challenges or experiences related to their race or ethnicity can be reviewed as part of a holistic application process. ED’s guidance says IHEs may provide opportunities for students to share how their experiences, including as a minority, would “position them to contribute to campus in unique ways.” However, IHEs must be sure to only consider race within the context of how it is tied to an applicant’s characteristic outside of race, such as courage or determination, and cannot consider race alone as a factor for admission.

The guidance also tells IHEs that they may still establish and maintain goals to develop a diverse student body, which may include strategies to reduce barriers for prospective students. Examples of allowable strategies in the ED guidance include targeted outreach, recruitment, and pathway programs to expand opportunities for disadvantaged students; collection of demographic information about a school’s applicant pool to inform current and future strategies and programs; evaluating admissions policies to determine how well they reflect the institution’s goals, including considering whether to halt legacy admissions practices or to focus more on increasing access to underserved populations; and strengthening retention strategies and programs to ensure that students from all backgrounds feel supported and have a sense of belonging on campus.

In the “Dear Colleague” letter that accompanies the frequently asked questions (FAQs), ED’s Office for Civil Rights says that it will “continue to use all enforcement tools at [its] disposal to protect students’ right to equal access to the opportunities that create pathways to higher education, and those afforded by higher education itself.”

[The “Dear Colleague” letter is available here](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230814.pdf) and [the FAQs are available here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-questionsandanswers-tvi-20230814.pdf).

Author: KSC

## News

### Suit Challenging Biden’s $39B Student Debt Relief Plan is Dismissed

On Monday, U.S. District Court Judge Thomas Ludington dismissed a lawsuit challenging the Biden administration’s recent student loan cancellation plan. The plan will cancel student loan debt for borrowers in income-driven repayment plans with debts older than 20 years, which includes over 800,000 borrowers.

The lawsuit was filed last month by two conservative groups, the Cato Institute and the Mackinac Center for Public Policy, who are represented by The New Civil Liberties Alliance. The groups argued that the administration’s plan violated federal law, since the U.S. Department of Education (ED) did not subject it to a formal rulemaking process.

They also asserted that the plan directly harms the efforts of nonprofit employers, like them, to recruit employees, due to a provision that provides forgiveness to borrowers in long-term forbearance seeking the cancellation of loans under the Public Service Loan Forgiveness (PSLF) program. The groups suggested that the administration’s new plan reduces the value of the PSLF program as a recruitment tool, as some borrowers will receive forgiveness in less time under Biden’s plan than under PSLF. They also requested that the loan discharges be halted while the case was considered.

Judge Ludington denied the groups’ request and dismissed the suit, finding that the groups lacked standing to challenge the administration’s plan. In the 18-page decision, Judge Ludington ruled that the two groups did not show that they would be directly harmed by the plan and that their injury assertions were unclear and too hypothetical. Specifically, he noted that the groups did not show that the plan would impact any current employees or that they would “imminently hire any employee who will have received such credit.”

The decision was handed down the same day ED began discharging the debts of eligible borrowers under the plan. The debt relief plan was initially announced in April of 2022 and is part of the administration’s attempt to fix mismanagement of income-driven repayment plans. The mismanagement included ED and loan servicers inaccurately tracking payments and encouraging borrowers to pursue long-term forbearances, which do not count toward loan forgiveness, instead of income-based programs, which do. Under the plan, ED made one-time adjustments to credit borrowers for payments made under income-driven repayment plans and the PSLF program which were not previously tracked correctly, leading to thousands of borrowers becoming eligible for forgiveness under those plans.

Neither the groups nor the New Civil Liberties Alliance have stated whether they will appeal the decision.

Resources:

Michael Stratford, “Judge tosses challenge to Biden’s $39B of student debt relief for longstanding borrowers,” *Politico*, August 14, 2023.

Author: BNT

### ED Launches Back-To-School Safety Campaign

The U.S. Department of Education (ED) announced a back-to-school safety campaign on Thursday in partnership with the U.S. Departments of Homeland Security, Health and Human Services, and Justice. The awareness campaign is aimed at bringing attention to the federal resources on school safety currently available to schools, State and local officials, and parents and guardians.

The agencies will be launching resources, including webinars, infographics, toolkits, and other materials, throughout August and September. All current resources are available on [www.schoolsafety.gov](http://www.schoolsafety.gov/), with new materials to be released over the next two months on a dedicated “hub” on the school safety website: [www.schoolsafety.gov/back-to-school-campaign](http://www.schoolsafety.gov/back-to-school-campaign).

The Federal School Safety Clearinghouse, a collaborative initiative between all of the federal agencies involved in the back-to-school awareness campaign, maintains the school safety website. The website includes information on a range of topics, including mental health, school climate, and bullying prevention, among others. The Bipartisan Safer Communities Act, signed into law last year, formally established the clearinghouse.

Author: KSC

***The Federal Update has been prepared to inform The Bruman Group, 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 The Bruman Group, PLLC and the reader.***

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