

Consideration of Fairness to Taxpayers and Persons Who Have No Loans.

ASK: Require the Secretary to consider any unfairness to individuals who did not attend college, individuals who did attend college but paid off their debts, and individuals who are taxpayers.

Proposed regulatory text:

§ 30.70(a)(1), (c)(1): amend “may” to “must.”

§ 30.80: strike all except (a), (d), (e), and renumber appropriately. Amend (a) to read:

(a) General. The Secretary may waive ~~all or~~ part of ~~any~~ debts owed to the Department arising under the Federal Family Education Loan Program authorized under title IV, part B, of the HEA, ~~the William D. Ford Federal Direct Loan Program authorized under title IV, part D, of the HEA,~~ the Federal Perkins Loan Program authorized under title IV, part E, of the HEA, and the Health Education Assistance Loan Program authorized by sections 701–720 of the Public Health Service Act, 42 U.S.C. 292–292o, under the conditions described in this section ~~including but not limited to those described in paragraphs (b)–(g) of this section~~

Add to Subpart G

(d) The Secretary shall not take any action to waive any debt owed to the Department without first assessing whether the action is fair to persons who never attended an institution of higher education, to taxpayers, and to persons who already finished paying off their student loans. The Secretary shall publish such assessment before taking any action to waive any debt.

Rationale:

Missing from the conversation about student-loan forgiveness to date is any substantial discussion about the effect on taxpayers and persons who do not have debts. In particular, there is a basic fairness concern to individuals who did not attend college. This concern was raised at oral argument in February by several

Justices on the Supreme Court. For example, the Chief Justice raised the situation of a person who runs a lawn-service company and said “his tax dollars are going to support the forgiveness of the loan for college graduate, who’s now going to make a lot more than him over the course of his lifetime.” Argument Transcript, *Department of Education v. Brown*, No. 22–535, at 27 (Feb. 28, 2023), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/22-535_fdhk.pdf. Another Justice expressed concern that the Department’s plan sent the message that Americans who never attended an institution of higher education, or who paid off their loans, are “somehow less deserving.” *Id.* at 35. These changes would require the Secretary to take into account those concerns.

In addition, this proposal makes several other changes

- It strikes the language about the William D. Ford program because part D does not appear to contain the purported authorizing language “enforce, pay, compromise, waive” and therefore should not be included within the scope of the rule.
- It strikes some of the language in Subpart G out of concern that the language is so broad that it would negate any limitation on the authority of the Secretary to waive requirements. It also is unclear how those provisions would interact with the various iterations of the Gainful Employment rules that have been proposed by the Department of Education, the most recent of which was published on October 10, 2023, and becomes effective July 1, 2024.
- The proposal retains text in Subpart G allowing the Secretary to waive loans for persons who would be eligible for forgiveness but for some reason is not enrolled in the forgiveness program.