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May the Executive Branch Forgive Student Loan Debt Without Further Congressional Action?

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Abstract

On April 1, 2021, the Biden Administration announced that Secretary of Education Michael Cardona will consider whether the President has legal authority to forgive up to \$50,000 per debtor in student loan debt without further Congressional action. This paper collects the leading arguments for and against the position that the Biden Administration can forgive this student loan debt as an administrative action and without additional congressional authorization. The paper first surveys the history of federal student loan forgiveness programs in the United States. The paper then considers whether statutes on the books—in particular, the Higher Education Act of 1965 and the Federal Claims Collection Act of 1966—grant the executive branch the authority to effect widespread student loan forgiveness. The paper considers how the Department of Education might use administrative action to forgive loans and assesses the pros and cons of the Department proceeding without notice and comment rulemaking. Finally, the paper evaluates the Biden Administration's prospects in court, including whether any parties would have standing to challenge administrative student loan forgiveness and which forms of administrative action are likeliest to survive judicial review.

Keywords: Student Loans, Debt Forgiveness, Federal Budget Policy, Administrative Law, Appropriations Clause, Department of Education

JEL Classification: D1, H3, H31, H52, K32, I22, I24, I28

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