

The Biden Administration Extends the Pause on Federal Student Loan Payments: Legal Considerations for Congress

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Last year, both the [Trump Administration](#) and the [116th Congress](#) granted temporary relief to certain student loan borrowers in response to the COVID-19 pandemic. On the first day of his presidency, President Joe Biden [requested](#) that the Department of Education (ED) extend the duration of this relief. This Legal Sidebar analyzes the asserted statutory bases for these relief measures and identifies pertinent legal considerations for Congress. (A [separate CRS product](#) discusses this issue from a policy perspective.)

The Statutory Framework

[Title IV of the Higher Education Act](#) (HEA) establishes several federal student loan programs to help borrowers finance a postsecondary education. ED “holds”—that is, owns and collects payments on—[most](#) of the outstanding loans made under those programs. The [Higher Education Relief Opportunities for Students \(HEROES\) Act of 2003](#) authorizes the Secretary of Education (Secretary) to “waive or modify any statutory or regulatory provision applicable to” the Title IV loan programs “as the Secretary deems necessary” to ensure that [individuals](#) adversely affected by a Presidentially declared national emergency “are not placed in a worse position financially.” (The HEROES Act discussed in this Sidebar is not the same as the identically named [COVID-19 relief bill](#) that the House of Representatives passed in the 116th Congress.) The HEROES Act requires the Secretary to publish such waivers or modifications “by [notice in the Federal Register](#),” but the HEROES Act [does not](#) require the Secretary to conduct a [rulemaking proceeding](#) to effectuate a waiver or modification. The Secretary may “exercise the waiver or modification authority . . . on a [case-by-case basis](#),” or he can use this authority for classes of persons [affected by a national emergency](#).

The following example illustrates how the HEROES Act operates: Under [ED regulations](#), borrowers participating in certain [income-driven student loan repayment plans](#) must provide their loan holders [documentation](#) regarding their [income and family size](#) to remain eligible. The Secretary has invoked the HEROES Act to [waive](#) that requirement for borrowers who cannot submit that documentation by the annual deadline because they “reside or are employed in a [disaster area](#).”

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Student Loan Relief During the Trump Administration

During the Trump Administration, both Congress and the Executive afforded temporary relief to certain Title IV borrowers to mitigate the COVID-19 emergency's economic impact. Following President Trump's [declaration](#) of a national emergency with respect to the pandemic under the National Emergencies Act (NEA), the Secretary [announced](#) in March 2020 that "[a]ll borrowers with federally held student loans" would "automatically have their interest rates set to 0% for a period of at least 60 days." The Secretary also announced that "each of these borrowers" would "have the option to suspend their payments for at least two months." The Secretary's March 2020 announcement [did not specify](#) the statutory authority for this relief.

The following week, the Secretary [announced](#) that ED would also "halt collection actions and wage garnishments to provide additional assistance to borrowers." Again, the Secretary's announcement did not specify which statute she invoked to provide this assistance.

A few days later, Congress enacted the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), which codified aspects of the relief the Secretary previously granted. [Section 3513](#) of the CARES Act required the Secretary to "suspend all payments due for" certain Title IV loans held by ED "through September 30, 2020." Among other things, [Section 3513](#) [also](#) (1) required the Secretary to "suspend all involuntary collection" activities on such loans during the payment suspension period, and (2) provided that interest would not accrue on such loans during that period.

The 116th Congress did not pass legislation extending [Section 3513's](#) sunset date. Instead, in August 2020, the Secretary purported to [extend the student loan relief](#) through December 31, 2020. Although the Secretary's August 2020 announcement [did not specify](#) the statutory authority for that extension, ED later published a [Federal Register notice](#) asserting that the Secretary based the March and August relief measures on the HEROES Act. Specifically, the notice stated the Secretary invoked the HEROES Act to

- [waive](#) the application of ED regulations governing interest [accrual](#) and [payment](#) on certain Title IV loans; and
- "[modify](#) the terms of the benefits provided under" [Section 3513 of the CARES Act](#) "such that they will continue to be provided to borrowers until December 31, 2020."

The Secretary [invoked the HEROES Act again](#) in December 2020 to extend this student loan relief through [January 31, 2021](#).

Student Loan Relief During the Biden Administration

On Inauguration Day, President Biden [announced](#) that "the Acting Secretary of Education will extend the pause on federal student loan payments and collections and keep the interest rate at 0%." Although the President's announcement [did not specify](#) how long this extension would last, [ED's website](#) suggests the extension will remain in effect "at least through Sept. 30, 2021." Additional details about the extension are [currently unavailable](#).

Legal Issues and Considerations for Congress

The relief measures discussed above raise unresolved questions regarding the Secretary's authority to waive or modify statutes and regulations in response to a national emergency. As far as CRS's research reveals, no court has interpreted or applied the HEROES Act or reviewed ED's actions taken pursuant to the Act. Thus, it appears no court has considered where the outer boundaries of the Secretary's HEROES Act authorities lie. Moreover, before the COVID-19 pandemic, Secretaries generally invoked the HEROES Act [relatively narrowly](#) to grant relief to limited subsets of borrowers, such as deployed military

servicemembers or victims of certain natural disasters. As a result, judicial and administrative precedent cast little light on whether the HEROES Act authorizes the COVID-19 relief measures discussed here.

When an agency, such as ED, interprets a statute it administers, courts [sometimes defer](#) to that interpretation under a doctrine called “[Chevron deference](#)” if (1) the statute is [ambiguous](#), and (2) the agency’s interpretation is [reasonable](#). Thus, if a litigant challenged a Secretary’s waiver or modification of a statute or regulation under the HEROES Act, the court would likely assess whether the Secretary’s action was based on a permissible reading of the terms “waive” and “modify.” Because the HEROES Act [does not define](#) those terms, the court might take guidance from how judges have interpreted those words in [other federal statutes](#). For instance, in *MCI Telecommunications Corp. v. AT&T Co.*, the Supreme Court considered [a provision of the Communications Act of 1934](#) that required certain entities to file tariffs with the Federal Communications Commission (FCC), but also authorized the FCC, “for good cause shown,” to “modify any requirement” imposed by the tariffing provision. The FCC purported to invoke its modification authority to [make tariff filings optional](#) for many communications industry participants. To evaluate whether the power to “modify any requirement” authorized the FCC’s action, the Court [consulted the dictionary definition](#) of “modify.” The Court concluded that “modify” contemplates only a “[moderate change](#)” to the thing being modified, not a “fundamental” change. In the Court’s view, rendering a “crucial provision of the statute” like the tariffing requirement inapplicable to “40% of a major sector of the industry” was “[much too extensive](#) to be considered a ‘modification’” under the dictionary definition of that term. The Court thus [declined to defer](#) to the FCC’s interpretation of the modification provision under *Chevron*, and [invalidated the FCC’s action](#).

If a court deemed the HEROES Act sufficiently analogous to the statute in *MCI*, it might conclude that the power to “[modify](#) any statutory or regulatory provision applicable to the” Title IV programs likewise does not authorize the Secretary to make *fundamental* changes to statutes or regulations. If so, the court would analyze whether extending Section 3513’s sunset date, or otherwise granting temporary relief to borrowers of ED-held Title IV loans, qualifies as a fundamental change to applicable law. The answer to that question is unclear, as courts have not yet considered whether and how *MCI* applies to an agency action like the temporary relief measures at issue here. While several cases hold that *permanently eliminating* something—like a [statutory penalty](#) or a [benefit plan](#)—is too fundamental a change to be a “modification” under *MCI*, it is less clear whether *temporarily suspending* something—here, a federal agency’s statutory and regulatory rights to collect payments and charge interest on a loan—is sufficiently “[moderate](#)” to qualify as a “modification.” How long the suspension period lasts may in turn influence whether the Secretary’s modifications to applicable law are “moderate” or “fundamental.”

At least two other points make *MCI*’s potential application to the COVID-19 student loan relief measures uncertain. First, *MCI* only illuminates how a court might interpret the word “*modify*”; it does not cast light on how a court might interpret the HEROES Act’s [separate authorization to “waive”](#) statutory and regulatory provisions. Second, the *MCI* Court did not base its ruling on the dictionary definition of “modify” alone; it also relied on “[contextual indications](#)” that Congress would not have authorized the FCC to curtail the Communication Act’s tariff-filing requirement significantly. Because “[r]ate filings are . . . the essential characteristic of a rate-regulated industry,” the Court found it “[highly unlikely](#) that Congress would leave the determination of whether an industry will be entirely, or even substantially, rate-regulated to agency discretion—and even more unlikely that it would achieve that through such a subtle device as permission to ‘modify’ rate-filing requirements.” The HEROES Act, however, has a different subject and context than the Communications Act. A court [might thus conclude](#) the statutes are insufficiently similar to import the definition of “modify” from one law to the other.

There is another reason why a court might decline to defer to the Secretary’s interpretation of the HEROES Act: courts are less likely to afford an agency *Chevron* deference when the agency has not announced its interpretation through [rulemaking](#). As discussed, the HEROES Act [does not require](#) the Secretary to conduct rulemaking when waiving or modifying a statutory or regulatory provision. Perhaps

for that reason, the Secretary has **not conducted rulemaking** to implement the relief measures discussed above. Thus, a court might not defer to the Secretary's determination that the terms "waive" and "modify" authorize ED to extend Section 3513's sunset date and suspend payments, interest, and collections on ED-held Title IV loans. That said, even when an agency interpretation is not entitled to *Chevron* deference, a court may still adopt an agency's interpretation if it is **persuasive**.

At least one other unresolved legal question remains. The NEA provides that national emergency declarations last **for one year**, but can be annually renewed by the President. Under the HEROES Act, the Secretary may only waive or modify a statute or regulation when the Secretary determines that doing so is "necessary in connection with a . . . **national emergency**" to ensure that **individuals affected by that emergency** "are not placed in a worse position financially." If the COVID-19 emergency ends before the date to which the Biden Administration has extended the temporary student loan relief, it may be unclear whether that relief remains "necessary in connection with a . . . national emergency."

Congress could potentially obviate these unanswered questions by granting temporary relief to borrowers of ED-held Title IV loans legislatively, as it did in Section 3513 of the CARES Act.

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