NASFAA'S "Off the Cuff" Podcast – Episode 306 Transcript

OTC AskRegs Experts: Where Things Stand with SAVE and IDR

Allie Arcese:

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Hugh Ferguson:

Hey everyone, welcome to another episode of "Off the Cuff." I'm Hugh Ferguson with our communications team.

Jill Desjean:

And I'm Jill Desjean with NASFAA's Policy Team.

Hugh Ferguson:

Welcome back everybody. Last week we had quite a few items that we were working our way through, and we actually ended up leaving some topics on the cutting room floor. So we decided this week we wanted to come back and talk about a specific issue concerning the status of the Biden Administration's saving on a valuable education, i.e. SAVE plan, and IDR plans in general. So this week I'm joined by Jill and she's going to help catch us up here on things.

And just to get us started, we saw over the summer that the courts were beginning to intervene in this program, and we've had a number of lawsuits that have brought challenges to it as the Biden administration has continued its efforts to finalize their new rules that would address student loan debt.

So Jill, I was wondering if you could just kind of catch us up a little bit on the background of this program, and how we've kind of gotten to today.

Jill Desjean:

Yeah, sure. It is kind one of those topics where it's necessary to go back a couple of years before you came in, to start with now and say what's happening, you'll lose a lot. So this goes back to the fall of 2022, picture yourself. I know everyone's been really busy getting their fall class settled, sorting out, lingering 24/25 FAFSA issues, getting ready for 25/26. So I think it's good to have a refresher and also a catch-up on what's happening right now because people's minds have probably been elsewhere.

So back in the fall of 2022, the Biden administration announced this plan for a broad scale debt forgiveness up to $20,000 for certain borrowers. And basically the only criteria was income. If you earn below a certain amount, you qualify for either 10 or $20,000 of debt forgiveness. And so that plan faced immediate challenges in the courts, and it was paused before anyone actually got any forgiveness from that plan.

Applications were accepted, but nobody actually got any debt forgiven because the courts put it on hold. And then in the summer of 2023, the Supreme Court actually ruled on that and struck down the entire executive order. So immediately after that, the Biden administration announced that they were embarking on two new steps to still get debt forgiveness for borrowers, but through other pathways. And the first one was the SAVE plan, which as mentioned, saving on a valuable education. It was a new income-based repayment plan, or income-driven repayment plan, excuse me. New-ish, I guess, it was a rebrand of REPAY, which was in place. They changed the terms of REPAY and they called it save. And this was something that the department had actually negotiated the fall before. I think that's something that gets lost in the conversation because of the timing. They had talked about it in the fall of 2022 and then the Supreme Court, as soon as they struck down the broad-scale debt forgiveness, the Biden administration said, "Okay, we've got something else."

But it was something they had brewing sort of all along. And some of the provisions of the SAVE plan, it was basically the most generous income-driven repayment plan that was going to be available to borrowers. They were going to protect more of a borrower's income in that calculation of discretionary income that's available to pay on your student loans. They eliminated negative amortization, which is this thing where your interest grows faster than what you're paying down on your loans. So even though you're making a payment, your balance continues to grow. And for married borrowers who filed their tax returns separately, the SAVE plan would exclude the spouse's income from the calculation of the monthly payment.

That was all effective right away as soon as the SAVE plan got announced in the summer of 2023. And then there were some other provisions that sort of happened in a trickle-down sort of fashion. Early forgiveness for low-balance borrowers. So borrowers who borrowed less than $12,000 were able to qualify for forgiveness as early as 10 years into repayment. That went into effect a couple months after, I think I want to say around January of 2024. And then the rest of the plan was set to become effective July 1, 2024. And the big thing that was in that piece was lowering monthly payments for undergraduate loans from 10% of discretionary income to 5% of discretionary income. So that was really going to slash borrowers' payments, and that was set to become effective on July 1, 2024.

Hugh Ferguson:

Great, yeah. So we've gone through about two years of federal action that has been very time-consuming, and that kind of brings us to today. So could you update us on just where things stand right now?

Jill Desjean:

Yeah, yeah. So right before the final implementation of SAVE was supposed to become effective, the plan was challenged in lawsuits filed in Kansas and in Missouri. And so that happened spring-ish of 2024 before the REC final rule was supposed to be fully implemented. There was a lot of back-and-forth between the courts between March and leading up to even today. But where we stand right now is basically the entirety of the SAVE plan is on hold, pending an appeal hearing set for October 24th.

And so what that means for borrowers who are just sort of, it's all very interesting to watch this sort of legal gymnastics and everything else, but there are people who are trying to repay their student loans, and need to apply for a repayment plan or understand what their options are. And where they stand right now is that anyone who was already enrolled in an income-driven repayment plan have been placed in an interest-free administrative forbearance.

So they're not having monthly payments, which is great. They're not having their interest accrue, they're also not making any progress toward their payments. So they're just in this very much like the plan itself, they're in this holding pattern, nothing's happening.

The online income driven repayment application. So not just SAVE, but for all the IDR plans, for SAVE, for ICR, for PAY, they're all, the online application is down. If you go to the Department of Ed's website, you can't apply online. You can fill out a paper application. It is not the easiest thing to find, I tried to find it yesterday and it took me an embarrassingly long amount of time, and I am supposedly someone who should be able to navigate this pretty well. So that's a little rough because to someone who hasn't been working in financial aid for almost 30 years, I can't imagine the difficulty of navigating all this when you can't even find the paper application.

But if you can find it, you can fill out a paper application for either the SAVE plan or income-based repayment. But those applications are not being processed by [inaudible 00:07:44], so you're just submitting an application and it's just hanging out right now, at least until October 24th. This is actually where things start getting really confusing, because I just mentioned, borrowers can complete this paper application for SAVE or IDR, but there are two other repayment plans. There's PAY and there's ICR income contingent repayment. So those plans are on the paper application, if you can find it, because the application never got updated. But borrowers can't apply for them unless one of a few different conditions applies.

The first is if they applied for one of those plans before July 1, 2024. The other is if they applied for one of those plans between July 18th and August 9th of 2024 and were approved for that plan during that small window, or if they have a consolidation loan that repaid a Parent plus loan.

Hugh Ferguson:

Interesting. So why is it just those circumstances?

Jill Desjean:

So I'll start with I guess, the easy one first I guess. Yeah, I'll start with the easy one first. So one of the provisions of SAVE was a sun setting of ICR and PAY, such that no new applications were permitted after July 1, 2024, unless they were for a consolidation loan repaying a plus loan. That was not eliminated through the SAVE regs. So basically this is the Department of Education hearing what people like us and other student loan advocates have been saying. The repayment system is too complex. There are a lot of problems with the repayment system, but one of them is just why do we have so many income driven repayment plans? Many of which the terms are only really slightly different. They might only result in a couple dollars difference every month in your repayment, but they have implications long-term in terms of qualifications for public service loan forgiveness or time-based forgiveness.

It's just like the idea is like, let's simplify. Let's not have 20 different options that all are essentially the same for most borrowers. Let's just leave variety where variety is needed. And so during that reg, they introduced this concept of sun setting, both PAY and ICR, except for plus loans. They left that out. But so anybody who's in those plans can stay in those plans, but any new applications, you would only be able to apply for repay or income-based repayment.

So basically the Department of Education can't eliminate a repayment plan because there are people on it, but they can stop new enrollments, and that's what they did. And the reason income-based repayment was not sunsetted, is because that exists in statute. So the department actually can't use the regulatory authority to get rid of income-based repayment or IBR because Congress created that plan. So that takes congressional action. But the ICR and PAY, those are created through regulations, and so the department has the flexibility to be able to amend or sunset those or do as they see fit within the confines of the law, of course.

Hugh Ferguson:

Got it. Yeah. So that July 1 date makes sense in terms of borrowers not being able to apply for ICR or PAY after then due to the sun setting provision of the SAVE regulations. But what is the reason behind the July 18th through August 9th window where PAY and ICR were back on the table as options?

Jill Desjean:

That one is pretty weird. Those dates do match up to some very relevant dates in all of these lawsuits. So July 18th was the date that a temporary halt on the entirety of the SAVE plan was put into place by the eighth Circuit court of Appeals. So prior to that, I mentioned that lawsuits had been filed as early as March. In those other sort of actions by the courts, provisions of the SAVE plan were blocked, but not the entirety. So July 18th was the first date that we saw any court blocking the entirety of the SAVE plan, but that order was a single sentence. It just said basically it's granting the request for a stay prohibiting implementation of the final rule. So pretty vague and light on details because it was one sentence. So as I mentioned before, the final rule included sunsetting those two plans. So that was presumably blocked, meaning those plans were still available effective July 18th.

It's like a weird sort of, you got to think through it a couple of times. There are a lot of negatives in there. But on July 18th, it seemed as though those plans were no longer sunsetted because the entirety of the final rule that included sunsetting those plans had been issued this temporary stay.

The August 9th ruling is more specific, and it mentions the specific things, which are basically everything that are in the final rule, but they say forgiveness of principal and interest, not charging interest, the payment threshold provisions. So presumably it's not blocking that sunsetting of PAY or ICR, meaning those options came off the table with this decision on August 9th. So we just had this little brief window between a temporary court order, and a somewhat less temporary court order where they got a little bit more specific and it seems like those two plans are sunsetted.

So this is kind of just nerdy details at this point because of course, no one can travel back in time. Students who applied for PAY or ICR during that window and got approved, they could be on those plans, but no one can do... It's almost impossible to apply for a plan right now, never mind for those specific plans. So yeah, that's where that is. That's where we are until October 24th when this appeal hearing is scheduled.

Hugh Ferguson:

Yeah, so definitely a lot of confusion in the air. Even I remember going through when these cases were happening, just trying to keep track of everything. And during this time, what can financial aid administrators do to help borrowers while things are so up in the air?

Jill Desjean:

Great question. We are hearing from financial aid administrators who are asking us that precise question. They're struggling right now because there's so much uncertainty. We had a lot of students, students on traditional calendars, graduate May or June, so they're in their six-month grace period right now. They're fine for the time being, but they might start getting bills in November or December. And this is typically the time when those students are choosing a repayment plan. So back in May, things were a lot less uncertain, applications actually were active and were being accepted for different repayment plans. Financial aid administrators were sending these students off into the world with a plan. And now the plan that they gave to those students doesn't exist anymore in some cases. And so I'm sure that they're hearing back from their students and asking what to do.

And unfortunately, we just still have a lot of operational questions. We sort of know where things stand legally right now, but then there's the whole... That's for lawyers, but what about for borrowers, right? About I am looking at a $2,500 a month standard repayment on my loans that's set to go into effect in November and I can't afford that. What do I do right now? And we're still waiting to hear more about operational details. We're not sure what's happening to borrowers who say, have submitted a paper IDR application but it hasn't been processed before their repayment start date. Do those go into this administrative forbearance as well, or do those just automatically go into standard repayment, which is likely not affordable for a lot of students. There are implications for borrowers on the path to public service loan forgiveness, time-based forgiveness. Lots of them are in this interest free forbearance if they were already in repayment, but they're not making any progress toward paying down their debt and attaining that forgiveness.

So they're fine. They're not expected to make any payments, and maybe they can use that money and start saving for retirement or put a down payment on a house or something. But in their minds, especially public service loan forgiveness, everybody knows the month that their debt is going to be gone. And so now they're kind of stuck for maybe they're pushing off certain life decisions because they want to get their loan forgiveness first, and now they're saying, okay, another couple months, maybe another year, maybe, whatever.

So yeah, it's a tough position to be in. And so we're just asking questions and trying to find out as much as we can to help financial administrators to help students to be able to say, this is what's going to happen to you right now if you're in this position, if you're in this position, if you're in this position. Because even though we're going to get something October 24th, that's a long time. A month is a long time to wait if you've got a bill in your hand, for example, for a student loan that you can't afford to repay.

Hugh Ferguson:

And the calendar is getting pretty crowded with important upcoming dates we have on September 30th. I'm sure a lot of our listeners know is the end of the on ramp period for when student loans restarted, and for the time being borrowers haven't been penalized for missing a payment, but things are going to change on September 30th.

Jill Desjean:

Yeah, so that's another group who is really put into a tough position because presumably, if you're taking advantage of either of these two things, if you are taking advantage of Fresh Start because you have had loans in default in the past, or if you've taken advantage of this on ramp to not make payments for this gradual resumption of repayment, odds are good it's because you didn't have the money to make those payments. And people generally don't voluntarily just decide not to repay their loans and suffer the impacts of all the negative impacts that go with that. So odds are good, if they didn't have the money to be making those payments all along, they would want to take advantage of an income driven repayment plan, which is on hold right now. So we've seen some calls from other organizations asking for the administration to delay, to extend that September 30th deadline, but nothing that we've seen as of yet. So more to come there as well.

I think one thing I really want to point out to our members who are struggling with all of this is that NASFAA is creating some resources. As we speak, we're working on them now to help our members just keep track of all of this. So watch today's news in the next couple of weeks or so for some of those resources to come out, which we hope will be helpful as people are trying to advise their current students, their recent graduates, and even their less recent graduates who have questions about what is happening during this very chaotic time in the loan repayment world.

Hugh Ferguson:

Yeah. So thanks for all that Jill. Is there anything else kind of in this sphere of repayment that we're on the lookout for?

Jill Desjean:

Yeah, so way back, going back in time to the start of this podcast, I mentioned that the administration took two actions as a result of the Supreme Court decision striking down that broad scale debt forgiveness. I only talked about the SAVE plan, there's a whole separate thing, which was a brand new NGREG that the department embarked on last fall, and going into this past spring 2024, trying to basically tweak that broad scale loan forgiveness into something more targeted. So identifying populations of borrowers who could benefit from student loan forgiveness. And so that now is also... Final rules aren't out yet, but also have faced many challenges in the courts already. So that is still very much ongoing and probably easy to confuse when you read in the paper, oh, another lawsuit about debt forgiveness. You have to stop for a minute and be like, oh, is it the SAVE plan? Or is it the targeted debt forgiveness? Or is it something we haven't even heard of yet?

It's a lot. So I think we'll probably get an opportunity on the podcast to talk about that in more detail at some point in the future as well.

Hugh Ferguson:

Awesome. That all sounds great. Thank you so much for providing some clarity on all of these moving parts Jill, just a little. But yeah, definitely things to keep a lookout for.

So thanks everybody for joining us for this week on "Off the Cuff." Be sure to send us your comments and subscribe to your streaming service of choice, and we will be catching up with you again very soon.

Allie Arcese:

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