

HIGHER EDUCATION INFORMATION MEMO

APRIL 12, 2024

The Fifth Circuit Extends Injunction of the Biden Administration's Borrower Defense to Repayment Rules

In a decision affecting the ever-shifting legal and regulatory dynamics of Borrower Defense to Repayment (BDR) claims, the Fifth Circuit postponed the effective date of a Biden administration plan to expand student debt relief to more borrowers who claim they were misled by institutions of higher education (IHE).

In a scathing 57-page [opinion](#) released on April 4, 2024, the Fifth Circuit instructed the district court overseeing *Career Colleges & Schools of Texas v. U.S. Department of Education* to issue an injunction against enforcement of the administration's student debt relief plan while the appeal of the underlying case is pending. According to the Fifth Circuit, the lower court erred by declining to issue a preliminary injunction on the basis that the plaintiffs had not shown irreparable harm.

The Fifth Circuit reversed and remanded the district court's order, finding plaintiffs had shown irreparable harm and stating that the student debt relief plan "overturns recent regulations issued by the [Trump] Administration and upends thirty years of regulatory practice." Furthermore, the Fifth Circuit assessed a "strong likelihood that the plaintiffs will succeed on the merits in demonstrating the [student debt relief plan's] numerous statutory and regulatory shortcomings."

In effect, the Fifth Circuit's opinion simply preserves the status quo by making the preliminary injunction (issued in August of 2023) permanent pending the outcome of the litigation. Importantly, it does not impact the processing of claims received between August 2023 – April 2024 pursuant to the *Sweet v. Cardona* litigation.

Bond will continue to monitor relevant updates in the BDR space and provide notifications to IHE clients when their interests are impacted.

If you have any questions, please contact [Seth Gilbertson](#), [Alison Roach](#), any attorney in Bond's [higher education practice](#) or the Bond attorney with whom you are regularly in contact.

