



# COVID-19 STUDENT LOAN FLEXIBILITIES AND THE CONGRESSIONAL REVIEW ACT

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# Agenda

- Congressional Review Act (CRA):  
Background
- Department of Education (ED)  
Actions Identified for Disapproval
- Implications of Disapproval Under  
the CRA
- Implications of Disapproval for  
Student Loans





# COVID-19 Student Loan Flexibilities and the CRA

## Overview of the CRA

# CRA: Background

- The CRA established a review mechanism to disapprove agency rules
  - Requires agencies to submit covered rules to Congress and GAO before they can take effect
  - Contains fast-track procedures for joint resolution of disapproval
  - Enactment requires signature of the President or veto override
- Effects of disapproval under the CRA
  - Rule has “no force or effect”
  - Prohibition on “substantially the same” rules
- The CRA defines “rule” broadly
  - Agencies sometimes do not submit actions that are covered by CRA definition of “rule” but have not gone through notice and comment
    - If a rule is not submitted to Congress, the CRA’s procedures are not triggered

## CRA: Background

- The Senate has developed “workaround” for rules not submitted to Congress: obtaining GAO opinion
- One-time student loan debt relief was not submitted to Congress
  - GAO opinion issued March 17, 2023; published in *Congressional Record* March 22
- GAO opinion identified two agency actions:
  - ED website notice “One-Time Federal Student Loan Debt Relief”
  - *Federal Register* notice (87 F.R. 61512; October 12, 2022)



# COVID-19 Student Loan Flexibilities and the CRA

ED Actions Identified for Disapproval

**\$1.6 trillion\***

Outstanding federal  
student loan debt

**43.5 million\***

Student loan recipients

# ED Actions Identified for Disapproval by Congress

- September 1, 2022–December 31, 2022, extension of:
  - ✓ Student loan interest accrual pause
    - At least 38 million federal student loan recipients affected
  - ✓ Student loan payment pause
    - ~27 million federal student loan recipients affected
    - Average borrower savings of \$233/month
    - Credit for months of paused payment
      - Public Service Loan Forgiveness (PSLF)
      - Income-Driven Repayment (IDR) plan forgiveness
      - Loan rehabilitation
  - ✓ Involuntary collections pause
    - ~6 million federal student loan recipients affected



# ED Actions Identified for Disapproval (continued)

- One-time student loan debt relief
  - ~40 million federal student loan borrowers eligible (89%)
  - ~\$430 billion in cancellation benefits



# **COVID-19 Student Loan Flexibilities and the CRA**

Implications of Disapproval Under the CRA

# CRA Joint Resolutions of Disapproval

## JOINT RESOLUTION


Providing for congressional disapproval under [chapter 8](#) of title 5, United States Code, of the rule submitted by the Department of Education relating to “Waivers and Modifications of Federal Student Loans”.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule* submitted by the Department of Education relating to “Waivers and Modifications of Federal Student Loans” (including the website announcement entitled “One-Time Federal Student Loan Debt Relief” and the Federal Register document entitled “Federal Student Aid Programs (Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program)” 87 Fed. Reg. 61512 (Oct. 12, 2022)), and printed in the Congressional Record on March 22, 2023, on pages S903–S906, along with a letter of opinion from the Government Accountability Office dated March 17, 2023, that the Waivers and Modifications are a rule under the Congressional Review Act, *and such rule shall have no force or effect.*

# 5 U.S.C. § 801(a): Submission Requirement

Section 801(a): an agency must submit a rule before it “can take effect”

➤ Are other ED actions “rules” subject to CRA submission?



**GAO** U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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## Decision

**Matter of:** U.S. Department of Education—Applicability of the Congressional Review Act to the Department of Education’s Student Loan Debt Relief Website and Accompanying Federal Register Publication

**File:** B-334644

**Date:** March 17, 2023

## 5 U.S.C. § 801: Retroactivity and Future Effect

Section 801(f): a disapproved rule “shall be treated as though such rule had never taken effect”

- CRA disapproval is retroactive
- ED would have to treat website announcement and *Federal Register* notice as though they *never* took effect

Section 801(b): an agency may not issue “a new rule that is substantially the same as” a disapproved rule

- CRA does not define when a rule is substantially similar
- ED could not issue any rule that is substantially similar to the website announcement and *Federal Register* notice

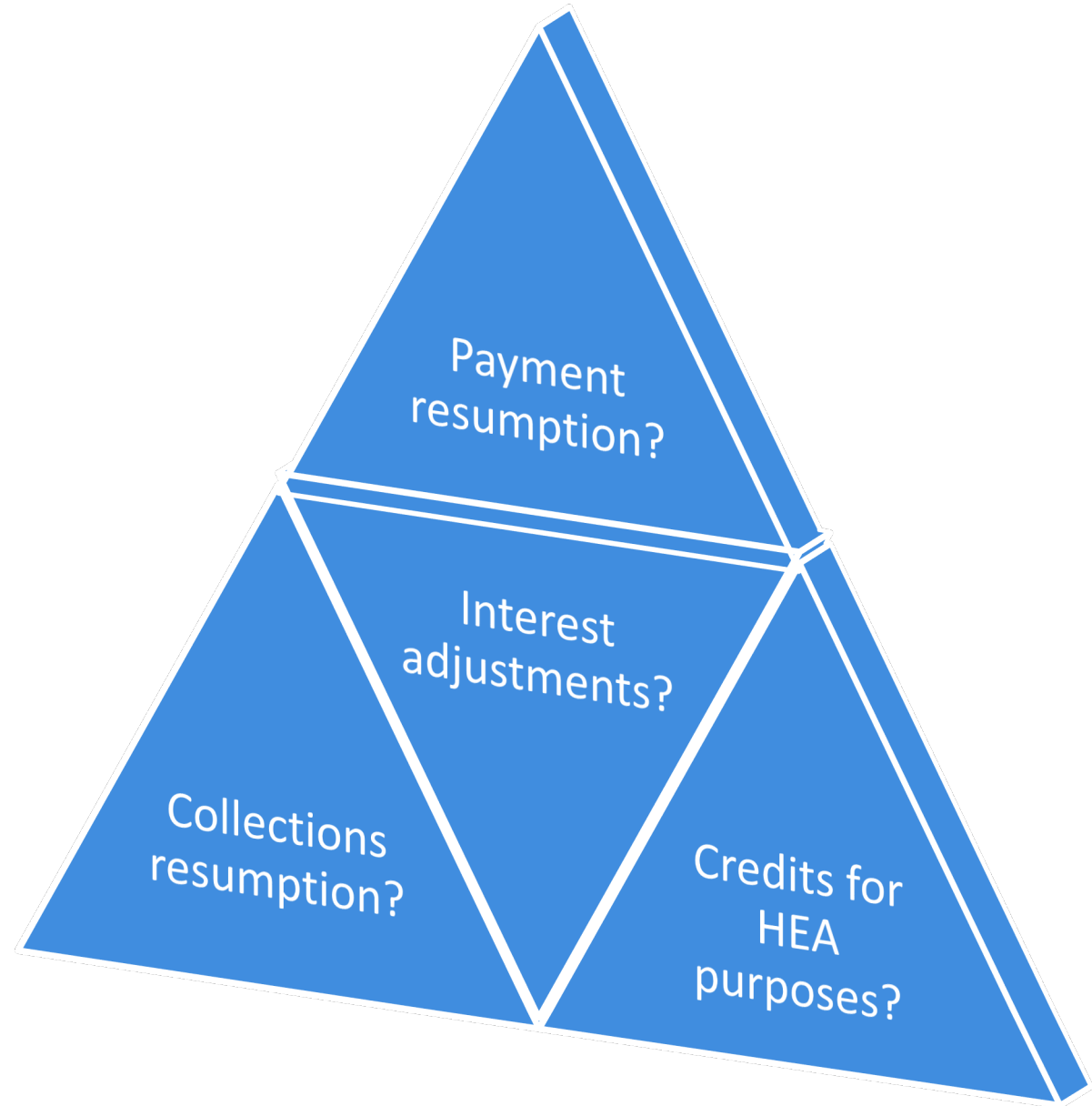


# **COVID-19 Student Loan Flexibilities and the CRA**

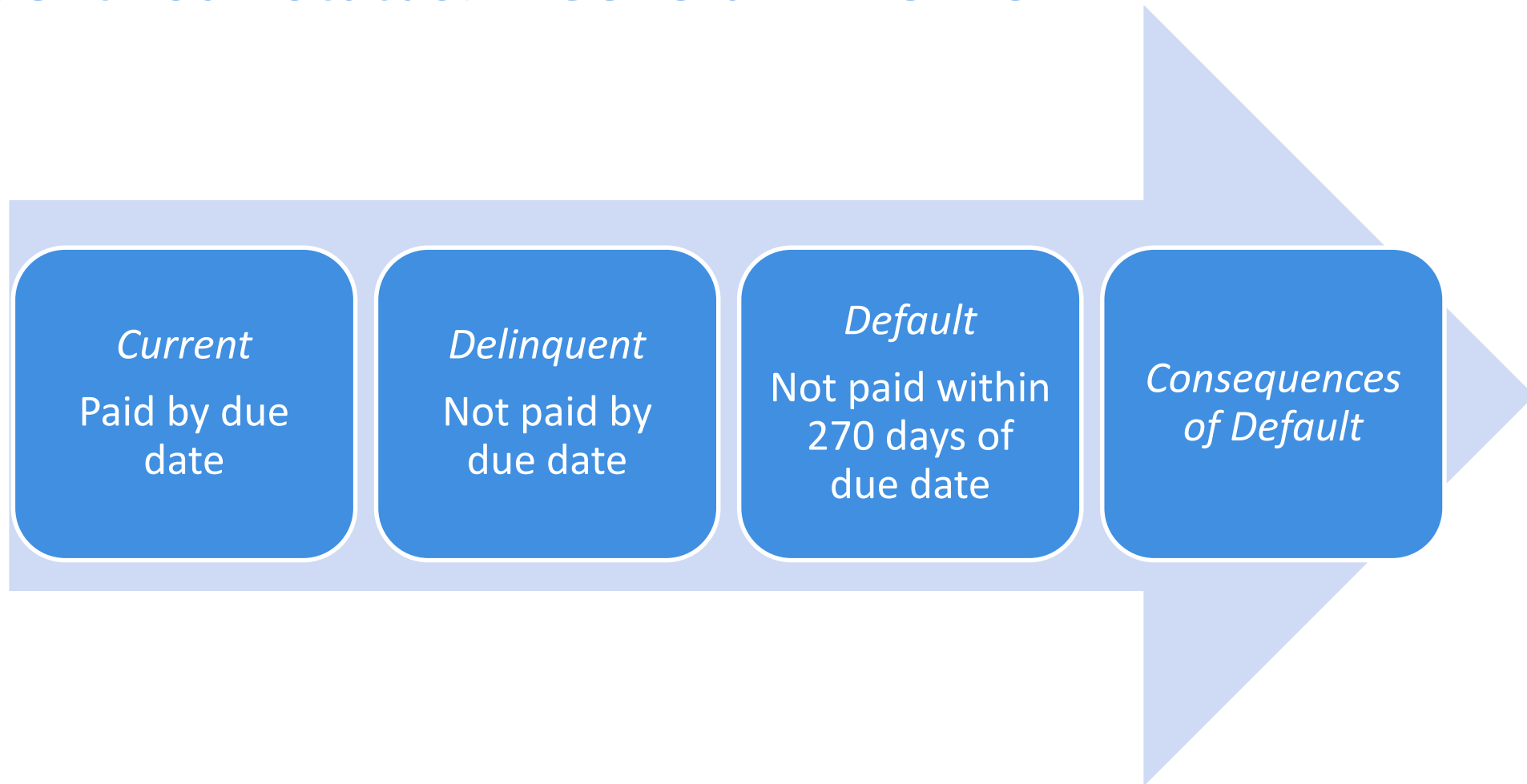
Implications of Disapproval for Federal Student Loans

# Potential Implications of Enacted Disapproval Resolution

- One-time student loan debt relief
  - No implementation
- Interest, payment, and collection pauses
  - Four categories of potential effects
- Future ED actions
  - Specific authorization may be required for future pauses



# Student Loan Status: A General Timeline





# Enforcing & Compromising Claims Owed to the Government

- Title 31 provisions: statutory structure for collecting a “claim of the United States Government” (31 U.S.C. § 3711, et seq.)
- ED regulations implementing Title 31 (34 C.F.R. pt. 30)
  - Generally “complies with the requirements of the Federal Claims Collection Standards (FCCS)” prescribed by Treasury and the Department of Justice (34 C.F.R. § 30.1)
- Additional collections authorities (e.g., nonjudicial wage garnishment under 20 U.S.C. § 1095a)

# FCCS Requirements

Demand for payment

Administrative authorities

Bases for compromising debt

Suspension or termination (versus discharge)

Referral for collection through litigation



**QUESTIONS**

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