

# CARDONA BIAS AGAINST CAREER COLLEGE STUDENTS

1. Selective Enforcement
2. Assumption of Guilt
3. Violation of the Separation of Powers

READ OUR MEMO



**TO:** Interested Parties

**FR:** Gerry Scimeca, CASE

**RE: Cardona Bias:** Against Career College Students

April 9, 2024

## EXECUTIVE SUMMARY

Trust in our nation's higher education system is plummeting and students continue to flee conventional four-year universities, all while President Biden's Department of Education (DOE) has botched rollout of a new Free Application for Federal Student Aid (FAFSA) for more than a year. Having so badly "bungled" FAFSA, delaying college options for hundreds of thousands of high school seniors, the DOE is now attempting to divert its critics.

Rather than fix these problems, the DOE has doubled down on its assault against career colleges. At a time when the Wall Street Journal called Gen Z the "Toolbelt Generation," this vendetta is hurting the very students whose interests the DOE is entrusted to protect. The result has been shuttered schools, jobs losses, and reduced educational choice. Thousands of Americans are losing out on the opportunity to earn a degree and step fully prepared into the workforce.

Using tactics of harassment, litigation, and illegal loan forgiveness, President Biden is using the DOE to advance the Administration's mission of punishing and shuttering higher-ed options that don't align with his leftist ideology. Recent selective enforcement actions reveal how a biased Student Financial Aid Office of Enforcement exists almost exclusively to prosecute unconventional colleges and universities.

Meanwhile, the Administration's sue-and-settle strategy is using Borrower's Defense to Repayment as an unchecked student loan bailout, while simultaneously denying more than 150 schools the right to due process. As if that is not enough, Biden continues to advance his campaign promise of student loan forgiveness through any means possible.

These maneuvers resulted from inconvenient obstacles – like Congressional approval and our nation's system of laws – that have been standing in the way of President Biden's political agenda against schools that don't comport with his narrow ideology. The Administration's controversial tactics threaten to establish a dangerous precedent of unchecked executive authority at the DOE that must be stopped.

## THE TACTIC: SELECTIVE ENFORCEMENT

A recent [report](#) on the DOE's Student Financial Aid Office of Enforcement reveals how the agency is working to selectively bring down career colleges. According to an [analysis](#) by the Government Accountability Office (GAO), of the 13 colleges against which the Student Financial Aid Office of Enforcement brought penalties, 10 were non-traditional schools. The most common penalty imposed was ending a college's access to federal student aid programs, which resulted in seven of the schools targeted by the DOE closing their doors.

This selective enforcement strategy has also been used to unfairly target Christian colleges and universities. The unprecedented \$14 million [penalty](#) against Liberty University in March came only months after the DOE imposed a record penalty of \$37.7 million against [Grand Canyon University \(GCU\)](#), the nation's largest Christian university. These penalties are both unparalleled with regards to the financial magnitude of the penalty.

The power and impact of the DOE's strategy of selective harassment will only get worse if President Biden's budget priorities are any indication. His 2024 [budget request](#) seeks to increase the Student Financial Aid Office's enforcement budget by a whopping 600%, to \$26.5 million. His [2025 budget doubles the maximum Pell Grant award by 2029](#), yet it deliberately cuts out proprietary schools.

Education Department records from October 2023 show that a significant majority of approved Borrower Defense discharge applications are for non-traditional schools. These 117,600 applications are in addition to the 150+ schools, many of them non-traditional, targeted in the Sweet v Cardona case. (\*The DOE data was just released in Spring 2024 in response to a congressional inquiry.)

## THE TACTIC: ASSUMPTION OF GUILT

In 2023, the U.S. Supreme Court struck down President Biden's \$400 billion plan to cancel federal student loan debt for millions of Americans under presumed powers in the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. The Court's ruling found that the Biden Administration overstepped its authority and needed Congressional approval for such a program. Yet, the move seemed to achieve the President's goal—to appeal to far-left voters. On the campaign trail, President Biden has [touted](#) more than \$144 billion in student loan forgiveness that his DOE has approved -- and pledged to do more.

The [Sweet v Cardona](#) agreement is widely recognized as Biden's student loan cancellation back-up plan to what it anticipated would be an unfavorable Supreme Court ruling. Biden's DOE maneuvered to automatically cancel billions in student loans through this sue-and-settle agreement that at the same time handed down an assumption of guilt for more than [150 schools](#)—a list that disproportionately targets career colleges. This strategy of unhinged litigation is the brainchild of an activist organization founded at the formerly esteemed Harvard University to take down unconventional schools. [The Project on Predatory Student Lending](#) proudly touts its "bold, strategic litigation and advocacy." Another group attacking only private companies in education is the [Student Borrowers Protection Center](#) who targets the student loan industry.

Former U.S. Department of Justice official Jesse Panuccio, who represents one of the schools that appealed to the Ninth Circuit, [argues](#) that the 150+ schools on the list are prevented from responding to potentially false claims brought against them and that the DOE provides only a one-sentence explanation of why they are on the list in the first place.

*“Being publicly branded a presumptive wrongdoer by one’s primary federal regulator, based on undisclosed evidence (or no evidence at all), is a denial of due process and a present and significant injury the appeal states.”*

The appeal proceedings brought by three intervenor schools—Everglades College, Lincoln Educational Services Corp., and American National University—document [concrete examples](#) of the harm caused by this presumption of guilt:

- Just months after being named on the targeted list, Lincoln was denied an opportunity to speak with Nevada high school students specifically because it was on the targeted list of schools.
- For the same reason, Everglades College faced delayed financing and even lost out on financing opportunities. It was forced to dedicate significant resources to address questions and concerns from lenders.

## THE TACTIC: ILLEGAL AND VIOLATION OF SEPARATION OF POWERS

[Legal scholars](#) and state leaders across the country argue that this power grab by Biden’s DOE is illegal and violates the separation of powers. Settlements like this permit executive agencies to exercise the equivalent of legislative power, since, using these settlements, agencies can assign themselves authority to take actions Congress never approved.

In an [amicus brief](#) filed with the U.S. Supreme Court for the Ninth Circuit, 20 state attorneys general argued that Education Secretary Cardona’s action to eliminate \$6 billion in student loan debt “tramples all over the separation-of-powers doctrine.” They further argue that the “executive branch does not have unlimited policymaking power, nor an unlimited bank account to forgive student loan debt.”

Mr. Panuccio stated in an interview that, if left unchecked, this DOE power to cancel trillions in federal student loans could impact our economy on the level of the Treasury Secretary.

While President Biden is using this sue-and-settle case as one of his tactics to deliver on his campaign loan forgiveness promises after the Supreme Court struck down his initial plan, his Administration is now being called out for its [“extraordinary failure”](#) in granting loan forgiveness. In response, the DOE has responded that forgiving student loans is “complicated.”

## CONCLUSION:

In a recent [interview](#) with Yahoo Finance, Secretary Cardona said, "I don't want to paint with a broad brush, but I will tell you, a lot of the work that we're doing is going after some of those for-profit institutions that are really taking advantage of our students." Yet, the data about the types of schools his agency has been targeting and the presumption of guilt with which so many of these schools must now contend demonstrate the broad reach, impact, and cost of the sweeping powers he has assumed.

It's time for Congress to demand answers from Secretary Cardona to end the DOE's attack on career colleges and other non-traditional schools, eliminate funding for the Student Financial Aid Office of Enforcement, and fix FAFSA.

