NCHER

DAILY BRIEFING

Tuesday, April 26, 2022

In Today's Edition

NCHER Annual Conference: Don't Forget to Register, Early Bird Rate Expires Next Week

The NCHER Annual Conference is scheduled for June 6-8, 2022 at The DeSoto in Savannah, Georgia. This important conference is open and designed for everyone across the higher education finance industry, and will provide attendees with ample opportunities to network, learn, and take information back home that they can use in their current jobs. The draft program centered around the theme of "Embracing the Future-Together" includes 10 pre-conference meetings and conference sessions on issues of importance to the membership. So register today and take advantage of the Early Bird registration rate that expires next week. Also, be sure to make your hotel reservations online or by calling (800) 239-5118. When calling the hotel, be sure to mention the NCHER 2022 Annual Conference in order to guarantee a room rate of $182 per room, per night. We look forward to seeing you in-person in Savannah!

NCHER Sends Letters to House and Senate Appropriations Committees in Support of AMF Extension

NCHER recently sent a letter to the House Appropriations Committee and a letter to the Senate Appropriations Committee in support of a one-year extension of Account Maintenance Fees (AMF). The letters urge the committees to provide the funds paid to state and nonprofit guaranty agencies so they can continue to provide important college access and success activities to students and their families, especially those impacted by the COVID-19 pandemic. They also commend the committee's recognition of the vital role that guaranty agencies play in promoting student success and for extending AMF authority for an additional year in the Consolidated Appropriations Act, 2022 as well as in prior appropriations bills. In both letters, NCHER President James Bergeron discusses the important services that guaranty agencies are required to provide to students and families under the Higher Education Act, including supporting college access and success activities in their states, assisting struggling borrowers under the federal guaranteed loan program in avoiding default on their federal student loans, and providing schools with basic administrative support. He also discusses the impact that AMF has in helping students, families, and schools, based on a recent survey conducted by several NCHER members. "Failure to extend AMF would cripple the ability of the agencies to carry out their statutory responsibilities under the law, and directly and negatively impact student and parent borrowers across the country," Mr. Bergeron said. NCHER urges its members to make a similar request to their Congressional delegations as the budget and appropriations process moves forward in the U.S. House of Representatives and U.S. Senate.

Senate Banking Committee Holds Hearing with CFPB Director on Semi-Annual Report

Today, the Senate Banking, Housing, and Urban Affairs Committee held a hearing titled, "The Consumer Financial Protection Bureau's (CFPB) Semi-Annual Report to Congress." In his opening statement, Chairman Sherrod Brown (D-OH) said that, under the direction of Director Rohit Chopra, America's workers finally have a strong CFPB on their side. He stated that for, "four years, the CFPB was run by a director and pressured by an Administration that always – always – looked out for corporations over workers….Instead of being a voice for consumers, they turned the agency into yet another arm of corporate power. " He said that he expected Republicans to launch baseless attacks against the CFPB's existence and question its authorities, transparency, and accountability. He commended Director Chopra for standing up for hundreds of millions of consumers and small banks and businesses and their communities, rather than big corporations. In his opening statement, Ranking Member Patrick Toomey (R-PA) said that the "CFPB began its existence under the Obama administration as a lawless and unaccountable agency. Unfortunately, under Director Chopra, the CFPB is more out of control than ever before. " He singled out the Bureau's claim of new authority, without congressional authorization or even a public notice-and-comment rulemaking process, to sue financial services providers using its UDAAP [unfair, deceptive, or abuse acts or practices] authority for discrimination without any evidence of discriminatory intent. He stated that the Dodd-Frank Act did not authorize disparate impact liability under UDAAP. He also cited recent actions by the Bureau to change its rules of adjudication to make it easier to engage in regulation by enforcement, stating that under the new rules Director Chopra can bypass an administrative law judge in enforcement cases and rule directly on substantive legal issues.

In his prepared statement, Director Chopra said that, in his first six months as Director, he shifted the CFPB's enforcement efforts away from investigating small firms and instead focused on repeat offenders and large firms, citing as an example the lawsuit against TransUnion. He also said that the Bureau has begun to "dramatically increase its issuance of guidance documents, such as advisory opinions, compliance bulletins, policy statements, and other publications." He also said that the Bureau is looking at ways to lower barriers to entry in the markets for consumer financial services and products to increase the pool of firms competing. He closed by referencing the outsized influence of dominant tech conglomerates over financial services, which he said raise a host of questions about privacy, fraud, and discrimination.

During the question-and-answer portion of the hearing, Chairman Brown asked about the over reliance of banks on junk fees and what actions the Bureau intends to take to curb the practice. Director Chopra said that he wants banks to make money on products consumers want. In response to a question from Ranking Member Toomey on whether anyone had suggested that the Bureau should proceed with rulemaking on its recent UDAAP initiative, Director Chopra said there have been decades of precedent. Sen. Elizabeth Warren (D-MA) mentioned that fines alone are not sufficient to deter repeat offenders, citing Wells Fargo as an example of a financial institution that should be broken up by the Federal Reserve. While Director Chopra declined to talk about individual cases, he said that large institutions should not receive favorable treatment and that regulators should look at a range of penalties. Sen. Bob Menendez (D-NJ) mentioned the U.S. Department of Education's recent announcements on monitoring Income Driven Repayment practices. Director Chopra said the Bureau will be examining student loan servicers, working with the Department on those with federal contracts. He said the Bureau also would be reviewing private loan servicers. Sen. Menendez also brought up deferment steering as a practice similar to forbearance steering, an issue referenced by the Department. Director Chopra acknowledged that the Bureau will be looking into this, citing the incentives servicers have to close calls quickly.

For additional coverage, including an archived webcast, visit the committee website.

CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers

Yesterday, the Consumer Financial Protection Bureau (CFPB) **announced** that it will invoke a largely unused authority to examine nonbank financial companies that pose risks to consumers. In the announcement, CFPB Director Rohit Chopra states that "This authority gives us critical agility to move as quickly as the market, allowing us to conduct examinations of financial companies posing risks to consumers and stop harm before it spreads." The announcement points out that, while banks and credit unions traditionally have been subject to federal supervision, Congress granted the CFPB authority to supervise nonbank entities, including those in the mortgage, private student loan, and payday loan industries, regardless of size, as well as "larger participants" in other nonbank markets for consumer financial products and services. Using that authority, the CFPB conducted rulemakings to define thresholds for entities subject to supervision in the markets of consumer reporting, debt collection, student loan servicing, international remittances, and auto loan servicing. The announcement also points out that Congress provided the CFPB with authority to supervise nonbanks whose activities the Bureau has reasonable cause to determine pose risks to consumers. The CFPB implemented this authority through a procedural rule issued in 2013, though it has been largely dormant until now. The Bureau also issued a **procedural rule**, which will authorize it to release certain information about any final determinations made. For more coverage, see this article from ***insideARM***.

Consumer Groups File Lawsuit Against Department of Education for Delay in Adjudicating Borrower Defense to Repayment Claims

Earlier this week, several consumer groups, including Student Defense, Harvard Law School's Project on Predatory Student Lending, and the National Consumer Law Center, filed a **lawsuit** against the U.S. Department of Education accusing the agency of failing to act on a group borrower defense to repayment claim that was filed in 2016 by Massachusetts Attorney General Maura Healy on behalf borrowers who attended Kaplan Career Institute. The lawsuit comes at a time when the backlog of borrower defense to repayment claims at the Department have grown from approximately 85,000 at the beginning of the Biden Administration to nearly 110,000 by the end of 2021.

Department of Education Expands Second Chance Pell Experimental Site to 73 Additional Institutions

Today, the U.S. Department of Education **announced** that 73 additional institutions of higher education would be invited to participate in the Second Chance Pell Experimental Site. The additional colleges and universities will bring the total number of institutions able to participate in the initiative to 200. The Second Chance Experimental Site was first established in 2015 by the Obama Administration to provide Pell Grants to incarcerated individuals. The Department estimates that, to date, these students have earned over 7,000 credentials. Institutions selected for participation have partnered with federal and state penal institutions in almost all 50 states to enroll thousands of incarcerated students in educational and training programs. In the announcement, the Department says that the vast majority of selected schools are public two- and four-year institutions. Twenty-four of the newly selected institutions are Historically Black Colleges and Universities and Minority-Serving Institutions. The selected schools may begin accessing Pell Grants as early as July 1, 2022. The Department is expected to issue proposed regulations to implement a broader reinstatement of access to Pell Grants for incarcerated students starting on July 1, 2023. As part of the press release, the Department also announced additional support to help incarcerated individuals with defaulted student loans, specifically affirming that such individuals would qualify for the Department's "fresh start" initiative.

U.S. Department of Education News

For today's *Federal Register*, click **here**.

The following announcement was posted to the Federal Student Aid's Knowledge Center Website:

- **(APP-22-06) Revised Special Handling Process for FAFSA Filers Under the Age of 13**

Member News

MOHELA recently [announced](#) that it is recruiting for a General Counsel in St. Louis, MO with six or more years of related experience. The fundamental reason this position exists is to give legal advice, ensure representation in legal proceedings, prepare legal research, and legal and policy analysis of issues to and administer contracts on behalf of the Authority.

A full job description is available here. To apply, please supply your cover letter and resume to hr@mohela.com

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General News

U.S. News and World Report highlights a new survey, conducted by the Institute of Politics at the Harvard Kennedy School, that finds 85 percent of young Americans favor some form of federal action on student loan debt, but only 38 percent favor total debt cancellation.

WATE News 6 examines who will pay for federal student loan forgiveness.

The Highland County Press includes an op-ed by Rep. Tom Cole (R-OK) who argues that, while federal student loan repayments were understandably paused during the height of the coronavirus pandemic, now two years later, Americans have returned to work and should resume paying down their loans.

Go Banking Rates reports on its latest student loan survey and what borrowers will cut from their budgets when federal student loan payments resume at the end of August.

Yahoo reports on how student loan debt is affecting Americans' financial decisions.

Inside Higher Ed reports that Educational Credit Management Corporation recently announced that it will close its three Altierus Career College campuses, which it purchased from the former Corinthian College chain in 2015.

An online version of this Daily Briefing is available to view and print from the
Daily Briefing Section of the **NCHER e-Library**.

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