NCHER

DAILY BRIEFING

Thursday, July 7, 2022

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NCHER Summer Legal Meeting: Register Today!

The next NCHER Legal Meeting will be held in just three weeks, on Thursday, July 28, 2022 at the law offices of Norton Rose Fulbright in downtown Washington, DC (799 9th Street NW, Suite 1000). This one-day meeting should benefit lawyers and non-lawyers alike. The registration fee is $400 for members and $500 for nonmembers. There are a number of hotels within walking distance of the law firm, which are posted on the event website. So register for the meeting today!

The meeting agenda was recently released and includes many topical sessions, including an update on the activities of the Consumer Financial Protection Bureau, developments in financing federal and private student loans, legal issues with federal student loan forgiveness and Operation Fresh Start, a discussion of state laws affecting student loan servicing and private student loan lending, and a primer on federal contracting, as well as a Washington update. If you have any questions, please do not hesitate to contact Shelly Repp at srepp@ncher.org.

Department of Education Releases NPRM on Borrower Defense to Repayment and PSLF, Includes 30-Day Comment Period

The U.S. Department of Education released a Notice of Proposed Rulemaking (NPRM) making revisions to the existing processes for borrower defense to repayment, Public Service Loan Forgiveness (PSLF), Total and Permanent Disability (TPD), closed school discharge, false certification discharge, and interest capitalization. A fact sheet released by the Department can be found here. The NPRM should be published soon in the *Federal Register* for a 30-day public comment period. The Department is aiming to finalize the rules by November 1, 2022, so that they will take effect no later than July 1, 2023. "We are committed to fixing a broken system," Education Secretary Miguel Cardona said in a press release. "If a borrower qualifies for student loan relief, it shouldn't take mountains of paperwork or a law degree to obtain it. Student loan benefits also should not be so hard to get that borrowers never actually benefit from them. The Biden-Harris Administration is determined to build a more accessible, affordable, and accountable student loan system. These proposed regulations will protect borrowers and save them time, money, and frustration, and will hold their colleges responsible for wrongdoing." The Department says that the regulations propose needed and critical improvements to the student loan system including the following:

Borrower Defense to Repayment and Arbitration: The proposed regulations would create a path for borrowers to receive a discharge if their colleges or universities lied to or took advantage of them. This includes allowing for group claims, eliminating strict limits on when borrowers can file a claim, expanding the type of misconduct that can lead to an approved claim to include aggressive and deceptive recruitment practices, and ensuring borrowers receive timely decisions about their claims. The Department also proposes a process for recouping the costs of such discharges from the college, running for at least six years following the borrower's last date of attendance at the school. The Department also proposes to prohibit institutions of higher education from requiring borrowers to sign mandatory pre-dispute arbitration agreements or class-action waivers, reinstituting a policy put in place by the Obama Administration but nixed by the Trump Administration.

PSLF: The Department proposes to make it easier for borrowers working in public service to gain progress toward forgiveness. Specifically, the Department proposes allowing more payments to qualify for PSLF including partial, lump sum, and late payments, and allowing certain kinds of deferments and forbearances (such as those for Peace Corps and AmeriCorps service, National Guard duty, and military service) to count toward PSLF. The Department also seeks comments on how best to consider the eligibility for PSLF of doctors providing services at nonprofit hospitals in states that prohibit their direct employment by that hospital and employees of for-profit early education programs that are licensed and regulated. The Department also proposes to create a formal reconsideration process in the regulations for borrowers whose applications are denied.

Interest Capitalization: The Department proposes to remove instances of interest capitalization for the Federal Direct Loan Program wherever it is not required by statute. Interest capitalization occurs when accrued interest is added to the principal balance of the loan, so that future interest accrues on a higher amount. The Department proposes to eliminate capitalization when a borrower enters repayment, exits forbearance, defaults on a student loan, and exits most of the income-driven repayment plans.

TPD Discharges: The proposed regulations would help more borrowers who are totally and permanently disabled receive and keep the discharge they are entitled to under the law. The proposed regulations would allow for a broader set of disability statuses recognized by the Social Security Administration (SSA) to qualify for discharge, eliminate the three-year income-monitoring period for borrowers who receive discharges based upon a determination by a physician or SSA, and widen the types of documentation and signatures borrowers may submit to demonstrate they are eligible for relief.

Closed School Discharges: The proposed regulations provide automatic discharges to any borrower who was enrolled within 180 days prior to the closure of a college or university and who did not complete their education at the school or via an approved teach-out agreement at another school within one year after the closure of their original school.

False Certification: The Department proposes to streamline the rules for when a college falsely certifies a borrower's eligibility for student loans when, in fact, the student was ineligible. These proposed rules would expand allowable documentation and clarifying the applicable dates for a discharge. The Department also proposes to allow for group false certification claims, so that similarly affected borrowers do not need to individually apply for relief when sufficient evidence exists.

NCHER is currently working with the higher education finance industry to analyze the

NPRM in order to determine the impact on our members and student and parent borrowers. The organization intends to respond to the public comment period on behalf of the Federal Family Education Loan community.

The Department's press release says that new federal regulations governing a statutory change to make incarcerated individuals eligible to receive Pell Grants, changes negotiated to income-driven repayment plans, changes to the 90-10 rule, and rules governing changes in ownership for colleges will be released in a separate notice this summer. It said changes to gainful employment regulations that would require career training programs to meet minimum standards for their outcomes to retain eligibility for federal aid will be released in early 2023.

For additional coverage on the NPRM's release, see these articles from *CNBC*, *The Wall Street Journal*, *Inside Higher Ed*, *Diverse Issues in Higher Education*, *The Chronicle of Higher Education*, *The New York Times*, *Fortune*, *Business Insider*.

FSA Releases Memo on FFELP Special Allowance Rates for Latest Quarter

Earlier this week, the U.S. Department of Education's Office of Federal Student Aid released a memorandum on the calculation of quarterly special allowance rates for the Federal Family Education Loan Program (FFELP) for the quarter ending June 30, 2022. The memo includes the following:

- **Treasury Bill Rate:** The Treasury bill rate is the average of the bond equivalent rates of the 13-week Treasury bills as published by the U.S. Department of the Treasury. For the quarter ending June 30, 2022, the average of the rates is 1.14 percent.
- **Commercial Paper Rate:** The commercial paper rate is the average of the bond equivalent rates of the quotes of the 3-month commercial paper financial rates in effect for each day in such quarter as reported by the Federal Reserve in *Publication H-15* (or its successor) for such 3-month period. For the quarter ending June 30, 2022, the average rate used to compute special allowance is 1.40 percent.
- **LIBOR Rate:** The LIBOR [London InterBank Offered Rate] rate is the average of the bond equivalent rates of the quotes of the 1-month LIBOR in effect for each day in such quarter as compiled and released by the British Bankers Association. For the quarter ending June 30, 2022, the average rate used to compute special allowance is 1.00

Louisiana Gov. Bell Signs New Student Loan Legislation Into Law

Last month, Louisiana Gov. John Bel Edwards signed two pieces of legislation into law that impose new requirements for both federal and private student loan lenders and servicers. Both bills are effective on August 1, 2022. First, HB610 will require student loan servicers to respond to inquiries and complaints from borrowers within 30 days of receipt and, in the case of receipt of nonconforming payments, to ask the borrower how a nonconforming payment should be applied. The bill also contains a list of prohibited practices that is generally in line with requirements in other states that have passed student loan servicing bills such as prohibitions on engaging in any unfair, abusive or deceptive practices; misrepresenting information or omitting material information in connection with servicing; misapplying payments; providing inaccurate information to credit bureaus; and failing to report favorable histories to credit bureaus. Second, HB789 will require private education lenders operating in the state to register with the Louisiana Office of Financial Institutions and provide annual reports to the Office. The reports have to cover, among other things, a list of colleges and universities at which the lender has provided a private loan to a student residing in the state, the total number and amount of loans for each school, the range of starting interest rates and percentage of applicants who receive those rates, and the default rate for borrowers at each school. The lender is also required to provide the Office with copies of the promissory note used during the prior year. Both bills passed the Louisiana Legislature with near unanimous support.
For additional coverage, including a write-up by Ballard Spahr, see this article from *JDSupra*.

GAO Sends Letter to Education Secretary Cardona Urging Compliance with Outstanding Recommendations on Improving Federal Student Aid Programs

Last week, U.S. Government Accountability Office (GAO) Comptroller General Gene Dodaro sent a letter to Education Secretary Miguel Cardona providing an update on the implementation of the office's recommendations by the U.S. Department of Education. The letter says that the Department has 60 open recommendations and that implementation of the recommendations could significantly improve agency operations.

Of interest to the NCHER membership, the letter says that the Department faces challenges overseeing federal student aid and loan programs as student loan debt approaches $1.6 trillion. "Our two recommendations in this area focus on providing clear instructions and guidance to student loan servicers and evaluating the effectiveness of federal student aid efforts," the letter says. "By fully implementing these recommendations, Education could provide more consistent services to borrowers and better serve the needs of federal student aid recipients." The letter includes an enclosure stating that, as of April 2022, the Department has taken steps to improve how it provides guidance to servicers, and has issued guidance to improve clarity on some issues, such as how servicers should apply overpayments to a borrower's student loan balance. In addition, the agency is redesigning its student loan financial services system, which will include guidance to servicers. To fully implement this recommendation, the Department needs to provide servicers with guidance that clarifies how to treat retirement benefits when calculating borrowers' incomes for income-driven repayment plans. Completing this effort could result in more consistent services to borrowers.

CFPB Issues Advisory Opinion on Protection of Personal Data in Credit Reports

Today, the Consumer Financial Protection Bureau (CPFB) issued an **Advisory Opinion**, which aims to ensure that credit reporting agencies and users of credit reports protect personal privacy. In a **press release**, CFPB Director Rohit Chopra said: "While Congress and regulators must do more to protect our privacy, the CFPB will be taking steps to use the Fair Credit Reporting Act (FCRA) to combat misuse and abuse of personal data on background screening and credit reports." While describing specific disclosure practices by credit reporting agencies that violate the Fair Credit Reporting Act (e.g., insufficient matching procedures), the advisory opinion makes clear that users of credit reports must make sure that they have a permissible purpose in obtaining credit reports, noting that some common permissible purposes include using consumer reports for credit, insurance, housing, or employment decisions. The advisory opinion outlines the criminal liability provisions of the FCRA, pointing out that users can face criminal liability for obtaining a background report on an individual under false pretenses or by providing a background report to an unauthorized individual. The guidance is part of the CFPB' Advisory Opinion Program, launched in 2020, to quickly provide interpretive rules to industry so that they can better understand the rules of the road.

Federal Reserve Releases Minutes of Recent Meeting, Says Will Accept Slower Growth to Fight Inflation

Yesterday, the Federal Reserve released the minutes of the recent meeting of the Federal Open Market Committee (FOMC) held on June 15-16, 2022. The minutes revealed that committee members were highly attentive to inflation risks. Given that figures from May showed inflation was not abating, a number of participants saw inflation as being more persistent than previously anticipated and judged that elevated inflation could become entrenched. The committee members attributed inflation to supply and demand imbalances, higher energy prices, and the Ukraine-Russian war, and saw the “firming of monetary policy and associated tighter financial conditions as playing a central role in helping address this imbalance and in supporting the Federal Reserve’s goals of maximum employment and price stability.” At the meeting, the FOMC raised the target range of the federal funds rate 75 basis points, to from 1½ to 1¾ percent. The minutes also indicated that a further jump of 50 or 75 basis points is likely to be appropriate at the next meeting, which is scheduled for July 26-27, 2022. The minutes revealed that the committee recognizes that “further firming in the policy stance would likely result in some slowing in economic growth and tempering in labor market conditions.” However, given the focus on inflation, the FOMC is indicating that this tradeoff is appropriate.

TICAS Brief Highlights Comprehensive Student Success Programs During COVID-19

The Institute for College Access and Success (TICAS) recently published a brief titled, Comprehensive Student Success Programs Learned and Adapted Through COVID-19, which explored seven evidence-based college completion programs to discuss their experience during the COVID-19 pandemic. The programs that TICAS looked into utilize a model that employs counselors, coaches, and case managers to connect students with personal, financial, academic, and other supports in order to help them complete college. TICAS found that, over the last two years, the programs noted that potential students became harder to reach and recruit, institutional and program policies discouraged students from enrolling in such programs, virtual support delivery models reduced student engagement, and program staff needed increased support and capacity. With these challenges, TICAS highlighted several ways in which student support programs adapted to serve students during the pandemic such as changing program requirements, working to normalize job loss and other financial issues, providing enhanced crisis support, increasing staff salaries, and focusing on a proactive approach to recruitment and retention. TICAS noted that the pandemic exacerbated needs for increased financial support for both programs and staff in order to retain staff and maintain the quality of student support programs.

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:

- 2023–24 CPS Test System User Guide

General News

Bloomberg reports that strained family budgets could buckle when federal student debt payments resume. Many Americans are dreading the return of student loan bills as they grapple with surging rent, gas, prices and other costs.

MarketWatch reports that interest rates on private education loans have fallen and what to know before borrowing.

Inside Higher Ed reports that California Gov. Gavin Newsom recently signed a massive state budget for Fiscal Year 2023 that promises billions of new dollars to higher education institutions, including $41.6 billion for colleges and universities. However, some higher education leaders were disappointed that long-awaited reforms to the state financial aid program were included in the budget but not funded.

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