



DAILY BRIEFING

Monday, November 14, 2022

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Weekly Rundown

The NCHER Weekly Rundown, which includes the latest information on important events in Washington, DC, is available today and can be downloaded from the [NCHER website](#).

Eighth Circuit Grants Injunction Blocking Federal Student Loan Forgiveness Plan, District Court Rules Plan Unconstitutional

Earlier today, a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit unanimously granted an [emergency injunction](#) blocking the U.S. Department of Education's federal student loan forgiveness plan. The appeals court had issued a temporary stay last month and ordered emergency arguments from six states that had chosen to sue and from the Biden Administration. In granting the injunction, the court ruled that it "will remain in effect until further order of this court or the Supreme Court of the United States," and that "the equities strongly favor an injunction considering the irreversible impact the Secretary's debt forgiveness action would have as compared to the lack of harm an injunction would presently impose." In its decision, the appeals ruled that the state of Missouri has standing to challenge the plan.

Separately, on Thursday, U.S. District Court for the Northern District of District Judge Mark Pittman issued an [order](#) ruling that the federal student loan forgiveness plan was an unconstitutional exercise of legislative power and must be vacated. The case was brought by two borrowers, one ineligible for the program because her loans are commercially held Federal Family Education Loans, the other who is not eligible for the full \$20,000 in forgiveness because he did not receive a Pell Grant. The plaintiffs contend that they could not voice their disagreement with the parameters of the program because the Department did not follow notice-and-comment rulemaking under the Administrative Procedures Act (APA). They also contend that the Secretary lacks the authority to implement the program. Though the plaintiffs moved for a preliminary injunction to enjoin the Department from implementing the program, Judge Pittman issued a decision blocking the agency from moving forward on the plan saying that the U.S. Department of Justice (DOJ) could not identify a reason for delaying a judgment on the merits. He also rejected DOJ's argument that no one has standing to challenge the program and specifically found that the plaintiffs do have standing. On the merits, Judge Pittman ruled that, because the federal student loan forgiveness program was created under the authority of the HEROES Act, which exempts the Department from the requirement to follow rulemaking, it did not violate the APA's procedural requirements. However, it is a different story on whether the HEROES Act actually authorizes such a program. The judge said that, because the program is an agency action of vast economic and political significance, the "major question doctrine" recognized by the Supreme Court earlier this year when it struck down a rule by the Environmental Protection Agency applies in this

case. In granting summary judgment to the Plaintiffs, he ruled that the Department lacks clear Congressional authorization for the program under the HEROES Act, saying “it is unclear whether the program is necessary in connection with [that] national emergency.”

Following the District Court’s decision, the Department announced that it was suspending the availability of the application that was made available to borrowers to apply for the federal student loan forgiveness program. At this time, we are not accepting applications. We are seeking to overturn those orders. If you've already applied, we'll hold your application,” the Department said. DOJ also filed an appeal of the ruling to the U.S. Court of Appeals for the Fifth Circuit, though the issue is widely expected to be resolved by the Supreme Court, which has already rejected preliminary efforts to halt the program.

For further coverage, see the following articles:

[Inside Higher Ed](#), [CNBC](#), [Reuters](#), and [Fortune](#) report that an appeals court has blocked the President’s federal student loan forgiveness plan.

[CNBC](#) reports that the Biden Administration has stopped taking student loan forgiveness applications.

[Buzzfeed News](#) reports that the U.S. Department of Justice has appealed a ruling by a district court that its forgiveness program is unconstitutional.

Consumer Groups Begin Calling for Extension of Federal Student Loan Payment and Collections Pause

Over the weekend, several consumer groups began calling for an extension of the federal student loan payment and collections pause, due to the mounting legal setbacks facing the Biden Administration’s loan forgiveness scheme. The current pause is scheduled to end on December 31, 2022. In a statement on Friday, Student Debt Crisis Center President Natalia Abrams, who has worked with Congressional Democrats, called for “an immediate extension of the federal student loan payment pause” until the legal hurdles to debt cancellation are resolved. “Alongside an appeal in this case, the administration should also consider further mechanisms to promote fairness, including a delay in the resumption of loan payments next year,” American Federation of Teachers President Randi Weingarten said. Student Borrower Protection Center Executive Director Mike Pierce also put out a statement saying: “The Biden Administration must use this decision

as an opportunity to make it clear that the student loan system will remain shut off as long as these partisan legal challenges persist.”

Democrats Win Nevada and Arizona Seats to Keep Control of U.S. Senate; U.S. House Still Too Close to Call

Over the weekend, Senate races in Arizona and Nevada were both called for Sen. Mark Kelly (D-AZ) and Sen. Catherine Cortez Masto (D-NV), giving Democrats 50 seats in the U.S. Senate. Republicans will have 49 seats in the next Senate, with the final seat to be determined by the outcome of Georgia’s runoff election on December 6th, between Republican Herschel Walker and Democrat Sen. Raphael Warnock (D-GA).

Nineteen seats in the U.S. House of Representatives remain uncalled almost a week after the mid-term election, including 10 races in California; two each in Colorado and Arizona; and one each in New Mexico, Oregon, Alaska, Maine, and New York. Republicans need to win just six of these seats to take control of the House, and they are currently ahead in the count in ten of the races. Nonetheless, all of the races are incredibly close, and absentee and mail-in ballots are still being tallied. For example, in California’s 9th Congressional District, an estimated 64 percent of ballots are left to be counted. For additional coverage, see these articles from [CNN](#) and [Politico](#).

FCC Issues Public Notice to Stop Student Loan Forgiveness Robocalls

On Thursday, the Federal Communications Commission (FCC) Bureau of Enforcement issued a [Public Notice](#) notifying all U.S.-based voice service providers about substantial amounts of apparently unlawful student loan-related robocalls originating from Urth Access, LLC. In the notice, the FCC notified all U.S.-based voice service providers that they may block voice calls or cease to accept traffic from Urth Access. The notice is based on news reports and consumer complaints showing that there has been an increase in scams regarding federal student loans since the Biden Administration’s announcement that it would create a student loan forgiveness program. Using data from a call blocking application, the FCC determined that approximately 40 percent of all student loan-related robocalls originated from Urth Access. The robocalls include prerecorded messages purporting to offer student loan assistance, including loan forgiveness. According to the notice, the robocalls seem to be lacking consumer consent, as required by the Telephone Consumer Protection Act. Simultaneously with the issuance of the

notice, the FCC issued Urth Access a cease-and-desist letter.

ARRC Releases Highlights of Recent Meeting Discussing SOFR Transition

Today, the Alternative Reference Rates Committee (ARRC) released the [highlights](#) from its meeting held on November 9, 2022, which provided an update on the move towards the Secured Overnight Financing Rate (SOFR), results from both the latest sentiment survey of ARRC members and the publicly-available loan remediation survey, and ARRC working group updates. At the meeting, ARRC members noted continued progress in the transition away from the London Interbank Offered Rate (LIBOR) to SOFR, especially in the cash and derivatives markets. Specifically, SOFR swaps have accounted for more than 90 percent of daily volumes on average of interest rate risk traded in the outright linear swaps market for the last two months while LIBOR swaps accounted for less than 4 percent of the overall volume in October 2022. In the most recent sentiment survey of ARRC members, respondents continued to characterize the LIBOR transition overall as progressing smoothly or generally smoothly into 2022.

FSA Issues Bulletin Inviting Tips on Possible Violations by Colleges and Universities

The U.S. Department of Education's Office of Federal Student Aid (FSA) recently issued a new bulletin establishing a new avenue for knowledgeable sources to provide information about potential violations of the Higher Education Act and its implementing regulations by institutions of higher education. Individuals with information about any possible violations can now directly contact FSA's Office of Enforcement at its [website](#) or by emailing FSATips@ed.gov. The website says, "FSA welcomes and encourages information from current or former employees, vendors, or contractors of institutions of higher education, third-party servicers, third party lead generators, students or any other relevant individual about potential violations." The website says that the tip line is not for complaints about discrimination, fraudulent use of Department funds, or student aid issues, all of which are handled by other entities with the Department.

U.S. Department of Education News

For today's Federal Register, click [here](#).

The following announcements were posted to the Federal Student Aid's Knowledge Center Website:

- [NSLDS Enrollment Reporting Guide \(November 2022\)](#)
 - [\(GENERAL-22-84\)FSA Enforcement Bulletin, November 2022 - Department of Education and Federal Student Aid Invite Tips and Information from Knowledgeable Sources on Potential Violations by Institutions](#)
 - [\(CB-22-20\) Federal Perkins Loan Program Cash on Hand Update Due Dec. 15, 2022](#)
 - [\(CB-22-19\) FISAP Edit Corrections Due Dec. 15, 2022](#)
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General News

[Higher Education Dive](#) reports that the U.S. Department of State and the Institute of International Education recently released new data on international student enrollment, which surged 80 percent in the 2021-2022 school year compared to the prior year.

The Middle States Commission on Higher Education announced that it will [revoke](#) the accreditation for ASA College.

[Higher Education Dive](#) reports that Sen. Ben Sasse (R-NE) received final sign-off from the state system's governing board to become the next President of the University of Florida.

College Futures Foundation released a [report](#) that found college presidents remain overwhelmingly white and male.

[CBS News](#) reports on the future of college rankings and the difficulties of valuing university degrees.

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National Council of Higher Education Resources

1050 Connecticut Ave NW #65793

Washington, DC 20035

Phone: **(202) 822-2106**

Fax: (202) 822-2142

