



DAILY BRIEFING

Monday, November 21, 2022

In Today's Edition

- NCHER Offices Closed for Thanksgiving, Daily Briefing Resumes Next Monday
- Save the Date: NCHER Legislative and Leadership Conference
- Weekly Rundown
- DOJ Asks Supreme Court to Vacate Administrative Stay from Eighth Circuit Blocking Federal Student Loan Forgiveness, Asks Fifth Circuit to Stay District Court Order
- Department of Education Sends Email Update to Borrowers Awaiting Federal Student Loan Forgiveness
- Senate HELP Committee Republicans Hire New Staff Director
- Department of Education's Expansion of PSLF Totals \$24 Billion
- U.S. Department of Education News
- General News

NCHER Offices Closed for Thanksgiving, Daily Briefing Resumes Next Monday

The NCHER offices will be closed this Thursday and Friday for Thanksgiving. The office will reopen and the *NCHER Daily Briefing* will resume on Monday, November 28, 2022. Have a Happy Thanksgiving!

Save the Date: NCHER Legislative and Leadership Conference

NCHER will hold its annual Legislative and Leadership Conference on February 6-8, 2023 at The Westin Washington, DC City Center. The conference, which will be in-person, is open and designed for everyone across the higher education finance industry and will provide important and timely sessions on the political and policy environment in Congress and the Biden Administration. The conference will provide attendees with ample opportunities to network and learn, and allow time for our members to meet with their Congressional delegations on Capitol Hill. The NCHER staff is currently working on a draft program agenda that will be released in the coming weeks; in the meantime, [register](#) today and take advantage of the Early Bird registration rate. Hotel reservations will also be available soon. We look forward to seeing you in Washington, DC!



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](#).

DOJ Asks Supreme Court to Vacate Administrative Stay from Eighth Circuit Blocking Federal Student Loan Forgiveness, Asks Fifth Circuit to Stay District Court Order

Last week, the U.S. Department of Justice (DOJ) filed a [motion](#) requesting that the U.S. Supreme Court vacate the injunction issued by the U.S. Court of Appeals for the Eighth Circuit blocking the U.S. Department of Education from implementing its federal student loan forgiveness program. The motion, signed by the Solicitor General, claims that the Appeals Court's analysis of the merits of the challenge filed by six states (including the State of Missouri) does not suffice to support any injunction. DOJ argues that the states lack standing, given the Supreme Court's reluctance to endorse standing theories that rest on speculation on the interests of third parties. DOJ also argues that the Department's action is lawful since the forgiveness plan falls squarely within the plain text of the HEROES Act. DOJ claims that the Department reasonably determined the action is necessary to ensure that a subset of affected individuals, namely those with lower incomes, are not placed in a worse position in relation to their obligations, since the agency provided evidence that these borrowers are at a particularly high risk of delinquency and default. The motion references previous invocations of the HEROES Act by the Trump and Biden Administrations that have permanent and substantial effects,

including the suspension of interest accrual and loan payments. DOJ further claims that the “major questions doctrine” cannot be invoked because clear authorization exists. The application also claims that the Appeals Court stay is overly broad, and that the Court could have simply enjoined the Department from discharging loans serviced by MOHELA. The motion argues that the equities favor staying the Appeals Court’s decision, pointing out that the injunction threatens the Department’s previously announced plan to resume federal student loan payments broadly. Finally, DOJ argues that, if the Supreme Court declines to vacate the injunction, it may wish to construe its application as a petition for a writ of certiorari and set the case for an expedited briefing this term in order to avoid prolonged uncertainty for millions of borrowers.

Separately, DOJ filed a [motion](#) requesting that the U.S. Court of Appeals for the Fifth Circuit stay an order from the U.S. District Court from the Northern District of Texas also blocking the loan forgiveness scheme as an unconstitutional exercise of Congress’s legislative power. The order from Judge Mark Pittman resulted in the Department halting the acceptance of additional loan forgiveness applications. In the motion, DOJ argues that the District Court found the plaintiffs had established Article III standing based on the alleged “deprivation of their procedural right under the APA [Administrative Procedures Act]” to comment on the Department’s loan forgiveness action. But then held that “the Program did not violate the APA’s procedural requirements,” given that the HEROES Act actions are exempt from the APA. For that reason, DOJ argues that plaintiffs lack a plausible injury and have not established standing. DOJ also argues that, in finding the HEROES Act does not authorize the debt relief program, the District Court erred in considering an unpleaded claim and granted relief that does not remedy the plaintiffs’ alleged injury. DOJ argues that the District Court errored in holding the Department exceeded its authority under the HEROES Act and, further, that the Court misapplied the “major questions” doctrine since the program is not an exercise of regulatory authority, but rather a disbursement of a federal benefit. In conclusion, the brief argues that the loan forgiveness program is authorized by the HEROES Act and that, because the order threatens significant and irreparable harm to the combined interests of the government and public without preventing any injury to plaintiff, equitable factors overwhelmingly favor staying the order from the District Court.

Department of Education Sends Email Update to Borrowers Awaiting Federal Student Loan Forgiveness

Over the weekend, the Biden Administration began sending out emails to applicants seeking student loan forgiveness to update them about the program as it makes its way

through the courts. The emails sent over the weekend were to some of the applicants whose applications have been approved by the Department and another batch of emails is expected to go out to the remaining borrowers whose applications have been approved. In a [tweet](#) on Friday, Secretary of Education Miguel Cardona said “beginning today, applicants and others seeking relief through the Biden-Harris Administration’s Student Debt Relief Plan will begin receiving updates. Don’t worry if you don’t get an email today – more are coming.” The email update also informed borrowers that they will still have to wait to see any loan forgiveness until the program’s legal challenges have been resolved. For further coverage, see these articles from [The Hill](#), [Business Insider](#), [Forbes](#), and [CBS News](#).

Senate HELP Committee Republicans Hire New Staff Director

On Friday, Senate Health, Education, Labor, and Pensions Committee Republicans announced that the new staff director starting in the next Congress would be Amanda Lincoln. Ms. Lincoln currently works as Health Policy Director for Sen. Susan Collins (R-ME) who sits on the committee. As staff director, Ms. Lincoln will work for Sen. Bill Cassidy (R-LA) if the Republican Conference elects him as the next Ranking Member as is expected in January. Previously, Ms. Lincoln was a health policy advisor to Sen. Cassidy and helped with negotiations on the bipartisan infrastructure law that was enacted last year. Prior to that, she was a Legislative Director to then-Sen. Mike Enzi (R-WY). Ms. Lincoln is expected to begin her new role as Staff Director when the new Congress comes into session in January 2023.

Department of Education’s Expansion of PSLF Totals \$24 Billion

Last week, the U.S. Department of Education released new [data](#) that showed its time-limited waiver of the Public Service Loan Forgiveness (PSLF) program has provided roughly \$24 billion in student loan relief to over 360,000 borrowers. The new data reflects a wave of new application approvals during the final week of the program’s application period, which ended on October 31st. In early October, Department data showed that 248,000 borrowers had qualified for \$15 billion in forgiveness under the program and, in early November, data showed that 359,790 borrowers received \$24.2 billion in forgiveness. Department officials said that the numbers could still go up as the agency continues to process applications. The latest data does not include PSLF

applications that the Department received as it got closer to the waiver deadline. The waiver program was announced last year and temporarily suspended traditional rules for the PSLF program such as allowing borrowers to retroactively receive credit toward loan forgiveness even if they had the wrong type of federal loan or were enrolled in an ineligible payment program. The Department ended the waiver program on October 31st, but the Biden Administration released new federal regulations that would allow borrowers who would have been eligible to receive retroactive credit towards PSLF under the temporary rule to instead be able to obtain credit under the regulations starting on July 1, 2023.

U.S. Department of Education News

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

General News

House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) released a new [blog](#) listing seven reasons why the Biden Administration should not extend the federal student loan repayment and collections pause, saying that the country is no longer in a national emergency and it contributes to inflation.

[CNN](#) analyzes four charts that show how college costs, student loan borrowing, and grant aid have changed over time using data from College Board's most recent Trends Report on College Costs.

[Higher Ed Dive](#) reports that the U.S. Department of Justice released new guidance allowing federal attorneys to now recommend student loan discharges in bankruptcy proceedings.

[Inside Higher Education](#) reports that enrollment in California's community colleges is at its lowest in 30 years.

[Higher Ed Dive](#) reports that the number of applicants sending their test scores for college admission has not rebounded since the COVID-19 pandemic.

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