NCHER DAILY BRIEFING

Wednesday, January 11, 2023

In Today's Edition

NCHER Legislative and Leadership Conference – Register Before Early Bird Rate Expires on Friday!

The NCHER Legislative and Leadership Conference, which will be held on February 6-8, 2023 at the Westin Washington, DC City Center, is less than a month away! This popular conference will be the first opportunity to hear about federal and state developments impacting the higher education finance industry and to meet with the House and Senate Education Committee leadership, Biden Administration officials, and your Congressional delegation on your organization's advocacy priorities. So Register Today!

The NCHER Board of Directors and staff have been hard at work putting together the program agenda geared toward providing important and timely sessions on the political and policy environment in the U.S. House of Representatives, the U.S. Senate, and the Biden Administration. This is a 'can't-miss' event for the NCHER membership! The current draft agenda includes:

- An important session that will provide a federal update on recent developments impacting the higher education finance industry and the outlook as we begin 2023.
- Members of the U.S. House Education and the Workforce Committee and U.S. Senate Health, Education, Labor, and Pensions Committee have been invited to speak about their priorities for higher education, including ideas to improve federal and private student loan programs and college access and success initiatives.
- Members of the U.S. Department of Education have been invited to speak about the agency's policies and priorities, including reforms to the federal student loan program.
- A Congressional staff panel where House and Senate staff will discuss the priorities of the Democratic and Republican leadership in the 118th Congress and whether there are consensus areas for enactment of improvements to federal and private student aid programs.
- A timely session examining enrollment trends in postsecondary education, followed by observations from college and university leaders on a range of current topics such as learner access, affordability, student outcomes, and value measures.
- Engaging sessions examining state policies impacting higher education finance; examining recent proposals impacting private student loan programs; and how the higher education finance industry is managing Board and staff through the period of ongoing uncertainty and change as a result of the federal student loan forgiveness program, Fresh Start, and new income-driven repayment plans.
- Multiple opportunities to meet with your Congressional delegation on Capitol Hill, and a bootcamp session to review NCHER's Advocacy Priorities for the 2023 in advance of Congressional and agency visits.

The Early Bird registration deadline has been extended to this Friday – January 13, 2023. So Register Today! Once you're doing registering, be sure that you make your hotel reservations at the Westin. NCHER has secured a room rate of $199 per room, per night, which will be available until the group reservation cut off date or the room block is full whichever comes first. You can call the hotel at 202-429-1700 or click here to make online reservations.

We look forward to seeing you in-person in Washington, DC!

House Democrats Reintroduce Private Student Loan Bankruptcy Fairness Act

Yesterday, Rep. Steve Cohen (D-TN) introduced H.R.138, the Private Student Loan Bankruptcy Fairness Act, which would amend Title II of the United States Code to allow private student loans to be dischargeable in bankruptcy. The legislation is co-sponsored by Reps. Danny Davis (D-IL), Julia Brownley (D-CA), Eric Swalwell (D-CA), and Ro Khanna (D-CA). "The 2005 bankruptcy 'reform' bill contained a provision to prevent private student debt from being discharged in bankruptcy, a gift to for-profit lenders not subject to the oversight dedicated to federal student aid debt," Rep. Cohen said in a press release. "Before 2005, private student loans were treated in bankruptcy like most other unsecured consumer debt, such as credit card debt. But now borrowers with mountains of student loans can no longer restart their lives if they fall on hard times. No one wants to declare bankruptcy but being unable to discharge substantial student loan debt makes the process even more onerous and disproportionately harms students of color. Our bill ensures that privately issued student loans will once again be treated like other consumer debt and be dischargeable in bankruptcy." The bill has been referred to the House Judiciary Committee for additional consideration.

CFPB Proposes Rule to Establish Public Registry for Supervised Nonbanks Terms and Conditions

Today, the Consumer Financial Protection Bureau (CFPB) released a proposed rule establishing a public registry of supervised nonbanks' terms and conditions in "take it or leave it" form contracts that claim to waive or limit consumer rights and protections such as bankruptcy rights, liability amounts, or complaint rights. According to the CFPB, under the proposed rule, nonbanks subject to supervisory jurisdiction would need to submit information on terms and conditions in form contracts they use that seek to waive or limit individuals' rights and other legal protections. That information would be posted in a registry that will be open to the public, including to other consumer financial protection enforcers. The Bureau says examples of terms and conditions that would be subject to inclusion in the registry are:

- Policies that waive servicemembers' legal protections.
- Policies that undermine credit reporting rights.

- Policies that limit lender liability for bank fees caused by repeated debit attempts.
- Anything that misleads consumers by using unenforceable waivers in mortgage contracts.

The proposed rule, if adopted, would identify and collect information on form contract terms and conditions that seek to waive or limit consumer rights and legal protections, and then use that information to increased market transparency and improve risk-based oversight. All nonbanks subject to the CFPB's supervisory jurisdiction, including those operating in private student loan origination, payday lending, and mortgage lending and servicing would be subject to the proposed rule.

The public comment period on the proposed rule is open for the next 60 days.

Pew Report Says Federal Student Loan Default System Needs Significant Reform

Earlier this week, Pew Charitable Trusts released a report titled, Student Loan Default System Needs Significant Reform, which analyzes research on the federal student loan default system to identify issues that the organization says have caused problems for borrowers. The report also proposes reforms that support the U.S. Department of Education's overarching goal of keeping borrowers in repayment and out of default through the Fresh Start initiative. According to the report, key problems include the following:

- Federal student loan default largely affects borrowers experiencing other forms of financial insecurity, and a large number of borrowers who exit default end up defaulting again (often referred to as "redefault"). Black and Hispanic borrowers are more likely to default than White borrowers, a disparity that may arise from differences in family income and wealth, along with the effect of persistent housing and labor market discrimination.
- Borrowers experience obstacles transitioning to more affordable payments in an income-driven repayment (IDR) plan, which ties monthly payments to borrowers' incomes and family sizes and offers loan forgiveness after 20 to 25 years of qualifying payments after exiting default. Research finds that certain pathways out of default lead to particularly worse outcomes and may lead borrowers to re-default.
- The consequences of default, including involuntary payments and collection fees, can be harmful to borrowers and counterproductive, ultimately making it harder for

them to financially recover and begin repayment again. When subject to forced collections mechanisms, borrowers in default are responsible for paying a higher share of their income than they would in the regular repayment system under an IDR plan.

- Borrowers in default have reported not receiving important information from private collection agencies, the companies that had been contacting borrowers to repay on defaulted loans.

Pew made the following recommendations to the Department:

- Eliminate the separate status of default and place borrowers in a form of long-term delinquency: With the move away from working with private collection agencies into what may be a more integrated approach, policymakers have an opportunity to rethink whether "default" still makes sense as a separate status. Instead of default, borrowers with loans more than 270 days delinquent could be placed in a special long-term delinquency status.
- Ensure borrowers do not pay more in collections than they would in repayment: If the Department is not prepared to end default, it should work to make sure that involuntary payments are capped at the amount borrowers would have paid under an IDR plan, including $0 payments for those with very low incomes, and that borrowers are only responsible for past-due amounts instead of the entire loan balance.
- Make it easier for borrowers to exit default and re-enter repayment: Under new methods for exiting default, borrowers could cure their loan by paying their past-due amounts or by enrolling in an IDR plan and making their first payment. If existing options for exiting default are retained, their one-time limit on utilizing these solutions should be eliminated to ensure that borrowers in default always have options for leaving default outside of forced collection.
- Improve the Department and its contractors' communication with borrowers: Any companies working to collect on loans in default should be required to provide timely, accurate, actionable, clearly branded information to borrowers about their options for resolving their default. Oversight and standardized ways for borrowers to file formal complaints should also be instituted to consistently review whether contractors are meeting such goals.

U.S. Department of Education News

For today's Federal Register, click here.

The following announcements were posted to the FSA Knowledge Center:

- **(GEN-23-01) Community Service Requirements in the FWS Program**
- **Comment Request: Federal Student Aid User Experience Design Research Generic Clearance**

Member News

KHEAA
Kentucky Higher Education Assistance Authority

The Boards of Directors of the Kentucky Higher Education Assistance Authority (KHEAA) and Kentucky Higher Education Student Loan Corporation (KHESLC) recently announced that they are seeking a dynamic leader to fill the position of Chief Executive Officer/Executive Director. KHEAA/KHESLC are sister organizations created by state statute, whose joint mission is to enable Kentuckians to achieve their education goals beyond high school. The CEO/Executive Director will serve as one of the Commonwealth's leading policy advocates for financial access to and successful completion of postsecondary education, representing the interests of prospective and enrolled Kentucky students and their families. To apply, submit a cover letter and resume via email in PDF format to ceosearch@kheaa.com by 4:30 PM EST Tuesday, January 31, 2023. For more information, click here.

General News

The Wall Street Journal provides further coverage of the U.S. Department of Education's proposed rule on Income-Driven Repayment, saying that such an effort is an attempt to write-off federal student loans in case it loses its loan forgiveness case before the U.S. Supreme Court.

Higher Ed Dive provides further coverage of the proposed rule on Income-Driven Repayment, which includes a Request for Information on listing "low-financial-value" institutions amid concerns from for-profit colleges.

Yahoo Finance reports that the proposed new Income-Driven Repayment plan does not include Parent PLUS borrowers despite attempts by advocates.

MarketWatch profiles a recent report by the Jain Family Institute that says the federal student loan repayment pause helped young people "participate in the recent housing boom."

Syntellis Performance Solutions recently released a survey, which found Chief Financial Officers are confident in their colleges' financial stability.

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