NCHER

DAILY BRIEFING

Friday, February 10, 2023

In Today's Edition

- SAVE THE DATE: NCHER Annual Conference to be Held June 5-7, 2023 in Ft Lauderdale, FL!
- NCHER-EFC-SLSA Submit Public Comments on Department of Education's Proposed Rule on New Income-Driven Repayment Plan
- Congressional Republicans, Former Officials, and Groups Weigh in with Supreme Court on Federal Student Loan Forgiveness Plan
- Cassidy, Foxx Send Letter to Department of Education Opposing New Income-Driven Repayment Plan, Requesting Extension of Public Comment Period
- House Budget Committee Releases List of Spending Cuts for Inclusion in Debt Limit Legislation, Includes Higher Education Provisions
- President Biden Delivers Second State of the Union Address
- House Education and the Workforce Committee Holds First Hearing, Members Lay Out Key Policy Priorities
- FSA Official Declines to Commit to October 1st Launch Date for Simplified FAFSA
- Center for Retirement Research Releases New Report on How Student Debt Affects Retirees
- U.S. Department of Education News
- General News

SAVE THE DATE: NCHER Annual Conference to be Held June 5-7, 2023 in Ft Lauderdale, FL!

NCHER will hold its Annual Conference on June 5-7, 2023 at the Hilton Fort Lauderdale, Florida. The conference, which is open and designed for everyone across the higher education finance industry, will provide attendees with ample opportunities to network, learn, and take information back home that they can use in their current jobs – from hearing about the current trends and hot topics to exploring new and potential business opportunities. 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. Also, be sure to make your hotel reservations online by calling (954) 414-2222. When calling the hotel, be sure to mention the NCHER 2023 Annual Conference in order to guarantee a room rate of $199 per room, per night.

We look forward to seeing you for some fun and sun in Ft Lauderdale!

NCHER-EFC-SLSA Submit Public Comments on Department of Education's Proposed Rule on New Income-Driven Repayment Plan

Earlier this week, NCHER, Education Finance Council (EFC), and the Student Loan Servicing Alliance (SLSA) submitted public comments on the U.S. Department of Education's Notice of Proposed Rulemaking (NPRM) creating a new income-driven repayment (IDR) plan. As previously reported, the NPRM would amend the current Revised Pay as You Earn Plan while phasing-out new enrollments and imposing new requirements for borrowers in the Pay As You Earn, Income-Contingent Repayment, and other payment plans. Under the proposed regulation, a student loan borrower who makes less than $30,600 annually would not be required to make monthly payments on their federal student loans, which is close to the annual earnings of a borrower making $15/hour. This is a change from current repayment plans where borrowers making $20,400 annually do not have to repay their loans. The NPRM says that borrowers who have undergraduate loans will pay five percent of their discretionary income while borrowers who have graduate loans will pay ten percent of their discretionary income. If borrowers have both undergraduate and graduate loans, the percentage payment will be based on a weighted average between five and ten percent. The proposed rule says that, while borrower monthly payments can be first applied to interest, the Department will stop charging unpaid monthly interest. The NPRM includes provisions that would forgive any remaining loan balance after 20 years of repayment (unless the amount loan debt is $12,000 or below where the repayment period will be 10 years).

In the letter, the trades say that they support the streamlining of student loan repayment plans in the Direct Loan program by reducing the number of IDR plans available to borrowers and the proliferation of repayment plans confuses students and parents and creates unnecessary barriers to higher education for low- and moderate-income students who believe a postsecondary education is unaffordable. At the same time, NCHER-EFC, and SLSA say that any IDR plan must have clear terms and conditions that are easily understood by everyone and that borrowers need confidence that the Department's proposed repayment plan is above legal reproach and that specific terms and conditions of the proposed regulations must indisputably be supported by the Higher Education Act. If the NPRM fails this standard, then borrowers will not have reliable tools to successfully repay their obligations. "We are concerned that aspects of this proposed rule violates the statute in material and new ways, which puts the proposal at risk of legal challenges that could result in implementation delays and possibly its complete undoing," the trades say. "Without addressing the conflicts between statute and regulation in the final rule, the increased risk of legal challenges, regardless of the final determination of legality, would subject borrowers to additional confusion. This could potentially result in delinquency and default and delays in implementing an improved IDR program." Finally, the public comments urge the Department, once the agency has completed its regulatory review, to coordinate implementation with its trusted partners including student loan servicers. The deadline for interested parties to file public comments is tomorrow, Friday, February 10, 2023.

Congressional Republicans, Former Officials, and Groups Weigh in with Supreme Court on Federal Student Loan Forgiveness Plan

Last Friday, current and former members of Congress, former U.S. Department of Education officials, and various interest groups filed amicus briefs with the U.S. Supreme Court in opposition to the U.S. Department of Education's federal student loan forgiveness program. In total, 20 briefs were submitted by the deadline. Fourteen briefs supporting the loan forgiveness plan were filed last month. As previously reported, the court will hear oral arguments on the case on February 28, 2023.

First, Senate Majority Leader Mitch McConnell (R-KY) and over 40 other Republican Senators filed a brief challenging the federal loan forgiveness program. In the brief, the senators argue that the plan is "an unprecedented executive overreach and defies the separation of powers between Congress and the President." Second, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and 127 other Republicans submitted their own brief. "The power of the purse is one of Congress's most potent checks against the executive branch, yet petitioners' overly broad reading of the HEROES Act risks encroaching on that power, as well as Congress's Article I legislative authority, by arrogating to the Secretary of Education the authority to forgive a trillion dollars in federal debt that otherwise would be owed to the Treasury," the brief says. Third, former House Education and the Workforce Committee Chairmen John Boehner, Buck McKeon, and John Kline, who were involved in drafting and passing the HEROES Act, filed a brief saying that Congress never intended to give the President the authority to cancel federal loan debt under the narrowly-drafted law. In the brief, the former lawmakers say that the President's justification is "wholly at odds with the Act's text, the context in which it was passed, and what has always been understood to be the limits of the Act's reach."

Fourth, five former Secretaries of Education Betsy DeVos, Margaret Spellings, Lamar Alexander, Roderick Paige, and William Bennett filed a brief arguing that, "the Executive Branch does not have general lawmaking or dispensary authority and cannot legislate a nationwide policy without clear authorization from Congress." They argue that the plan is a violation of separation of powers, and that the Department is required by law to collect federal student loans unless specifically instructed otherwise by Congress. They argue that the HEROES Act was meant to allow the Department to modify traditional rules in order to help borrowers during the pandemic, not "craft an entirely new program from whole cloth." Fifth, the Chamber of Commerce wrote its own brief in which the organization argues that student debt relief is "a significant exercise of the power of the purse" that should be decided by Congress, not the Executive Branch. The Chamber argues specifically that the court should use this case to "reinforce" its ruling in West Virginia v. Environmental Protection Agency limiting the power of federal agencies.

Finally, Protect Democracy filed a brief expressing concern about what it sees as the overuse of emergency powers by the Biden Administration. "It is important to recognize that both student debt and the pandemic have disproportionately harmed lower income and minority communities," the brief says. "But the answer to these problems is not the unchecked aggrandizement of executive power. And in this regard, Protect Democracy notes that it appears there may be other lawful ways the Biden administration could use executive action to achieve the goal of relieving student debt."

Cassidy, Foxx Send Letter to Department of Education Opposing New Income-Driven Repayment Plan, Requesting Extension of Public Comment Period

Last Friday, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Senate Health, Education, Labor, and Pensions Committee Ranking Member Bill Cassidy (R-LA) wrote a letter criticizing the U.S. Department of Education's proposed rule creating a new income-driven repayment (IDR) plan and asking Education Secretary Miguel Cardona to extend the public comment period for at least an additional 30 days. "These regulations are yet another example of your Department usurping the power of the purse, an authority solely held by Congress," the lawmakers wrote. "This proposed regulation would cut future borrowers payments in half and eliminate the expectation for these borrowers to pay back even the principal on their loan. This would fundamentally break our higher education financing system. A scholar at the Brookings Institution estimated that the rule would result in the average borrower repaying only 50 cents on the dollar, turning a federal loan program into an untargeted grant program. As a result, this rule will be costlier and more harmful to taxpayers than the President's illegal mass student loan cancellation policy awaiting judgement by the U.S. Supreme Court." Chairwoman Foxx and Ranking Member Cassidy argue that the proposed IDR rule could be the most-costly regulation in American history.

House Budget Committee Releases List of Spending Cuts for Inclusion in Debt Limit Legislation, Includes Higher Education Provisions

House Budget Committee Chairman Jodey Arrington (R-TX) recently released a white paper titled, The Debt Limit and Fiscal Restraint, which encompasses his list of spending cuts that could be included in any attempt to raise the nation's debt limit. "House Republicans will pay our debts and protect the good faith and credit of the United States, but we will not give President Biden an unlimited line of credit," the committee says. "After two years and $10 trillion of unbridled spending by Democrats, which led to record inflation, soaring interest rates, and an economic recession, it would be irresponsible to raise the debt limit without common sense spending controls." Of interest to the NCHER membership, the list includes language ending the White House's student loan policies.

"President Biden's student loan bailout is not only costly and misguided, but recent studies have also show that it disproportionally benefits the top 10 percent of income earners. Ending these bailouts would save hundreds of billions of dollars." The list says that ending the U.S. Department of Education's federal student loan repayment moratorium will save $25 billion and prohibiting the Department from carrying out the loan forgiveness plan would cost $379 billion. For further coverage, see this article from Business Insider.

President Biden Delivers Second State of the Union Address

On Tuesday night, President Joe Biden delivered his second State of the Union Address to Congress. The President spent most of the speech discussing health care, infrastructure, and the economy, but he did spend a few minutes discussing education. "Restoring the dignity of work also means making education an affordable ticket to the middle class," he said. "When we made 12 years of public education universal in the last century, it made us the best-educated, best-prepared nation in the world. But the world has caught up. Jill, who teaches full-time, has an expression: 'Any nation that out-educates us will out-compete us.' Folks, you all know 12 years is not enough to win the economic competition for the 21st Century. If you want America to have the best-educated workforce, let's finish the job by providing access to pre-school for 3- and 4-year-olds. Studies show that children who go to pre-school are nearly 50% more likely to finish high school and go on to earn a 2- or 4-year degree, no matter their background. Let's give public school teachers a raise. "And we're making progress by reducing student debt and increasing Pell Grants for working- and middle-class families. Let's finish the job, connect students to career opportunities starting in high school and provide two years of community college, some of the best career training in America, in addition to being a pathway to a four-year degree. Let's offer every American the path to a good career whether they go to college or not."

House Education and the Workforce Committee Holds First Hearing, Members Lay Out Key Policy Priorities

On Wednesday, the House Education and the Workforce Committee held its first hearing of the 118th Congress on education issues titled, "American Education in Crisis." In her opening statement, Committee Chairwoman Virginia Foxx (R-NC) laid out her top education priorities in the new Congress, which includes passing the Parents Bill of

Rights, reforming higher education, improving the nation's workforce development programs, and increasing oversight. In his opening statement, Committee Ranking Member Bobby Scott (D-VA) laid out his priorities which include increasing school infrastructure, making higher education more affordable, and increasing funding for job training and apprenticeship programs. In his testimony, Dr. Monty Sullivan, President of the Louisiana Community and Technical College System, expressed support for expanding eligibility for Pell Grants to short term programs, stating "the single most important step Congress can take in helping address our nation's skill shortage is to immediately authorize the use of Pell Grants for workforce programs." In his testimony, Scott Pulsipher, President of Western Governors University pushed for the expansion of competency-based education, increased access and equity in higher education and the integration of education and the workforce. For additional coverage, including an archived webcast of the hearing, visit the committee website.

FSA Official Declines to Commit to October 1st Launch Date for Simplified FAFSA

Earlier this week, the U.S. Department of Education Office of Federal Student Aid (FSA) Director of Policy and Oversight participated in a session held at the Leadership and Legislative Conference hosted by the National Association of Student Financial Aid Administrators (NASFAA). During the session which covered simplification of the Free Application for Federal Student Aid (FAFSA), the moderator asked FSA for a progress update on its implementation of the FAFSA Simplification Act. FSA would only commit to a launch of the simplified FAFSA during some time in the fourth quarter of 2023. "We are working closely with you all, with our partners, and with NASFAA on getting as close to a launch date and being able to get as specific as we can on that," the FSA official is reported as having said. "But I know there's been a lot of … angst around the fact that we have not affirmatively said October 1. And this is exactly why. We are working aggressively toward that development date, but we want to be confident that we deliver a stable and secure FAFSA to you, and we want to do it in a way that is predictable with everything that we can share with you. Because we know we don't implement this alone." A launch past October 1 could require state aid programs, institutions, and other higher education stakeholders to change their systems and processes to accommodate a shortened application timeline.

Center for Retirement Research Releases New Report on How Student Debt Affects Retirees

The Center for Retirement Research at Boston College released a new report titled, "How Do Unpaid Student Loans Impact Social Security Benefits?" The report investigates the effect of student loans on the retirement years of individuals. According to the report, the debt burden among borrowers over 65 has been growing rapidly, as have default rates. This is concerning because retirees with delinquent loans can have their Social Security benefits withheld to compensate. The report estimates that the average delinquent borrower over 65 will see a $2,500 reduction in annual Social Security benefits, which could be very difficult for families just making ends meet. They also estimate that this problem will only become worse over time. As part of the research, the Center examined the potential effects of the U.S. Department of Education's federal student loan forgiveness program on older borrowers. The organization found that, among borrowers over 65 who are delinquent, Black borrowers would see the largest decrease in delinquency (1.8 percent), and Hispanic borrowers would see the largest relative decrease, with the share of delinquent debt holders cut in half.

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:

- (GENERAL-23-08) Washington's Birthday Federal Holiday Processing and Customer Service Hours
- (GRANTS-23-01) Federal Pell Grant Program Reconciliation
- (CB-23-05) Application for Participation in the Work Colleges Program
- (GENERAL-23-09) Updates to the Gramm-Leach-Bliley Act Cybersecurity Requirements

- Comment Request: Fiscal Operations Report for 2022-2023 and Application To Participate 2024-2025 (FISAP) and Reallocation Form

- Federal Trade Commission Standards for Safeguarding Customer Information

General News

The Hill publishes an op-ed stating that the U.S. Department of Education has severely underestimated the cost of changes to the federal student loan program.

Higher Ed Dive reports that momentum for free college keeps growing at the state level.

Inside Higher Education reports that the House Education and the Workforce Committee may be ready to tackle legislation extending Pell Grant eligibility to short-term programs.

House Education and the Workforce Committee Chair Virginia Foxx (R-NC) delivered a speech on the House Floor this week saying that "College-for-All" mentality has failed students.

Higher Ed Dive reports that high school students who met with their counselors were more likely to apply for college aid.

Forbes reports on what student and parent borrowers should expect with their federal and private student loans in 2023.

Do not forward this email with this link included.
Anyone clicking on this link will unsubscribe you from the Daily Briefing distribution.
Unsubscribe | Manage subscription

National Council of Higher Education Resources
1050 Connecticut Ave NW #65793
Washington, DC 20035

Phone: **(202) 822-2106**
Fax: (202) 822-2142