NCHER BRIEFING

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SoFi Files Lawsuit Against the Department of Education Challenging Federal Student Loan Repayment Pause

Last week, SoFi filed a lawsuit in the U.S. District Court for the District of Columbia challenging the U.S. Department of Education's federal student loan payment and interest pause issued in November 2022. In the suit, SoFi says that, unlike other extensions, the Department did not claim that continuing the current moratorium was necessary to address harm caused to borrowers affected by the COVID-19 pandemic but asserted that the further extension was intended to alleviate "uncertainty" for borrowers during the pendency of ongoing litigation regarding the federal student loan forgiveness program, including borrowers who are not eligible for debt relief. The suit alleges that the

extension is unlawful on multiple grounds. The HEROES Act provides limited authority to relieve transitory burdens for federal student borrowers who are temporarily unable to make payments on their loans due to active military service or national emergencies. But the eighth extension applies to all federal borrowers in the country, not just those suffering hardship as a result of the current phase of the pandemic. SoFi argues that the eighth extension does not even attempt to redress harm from the pandemic at all, but rather to alleviate "uncertainty" caused by litigation, a justification that the HEROES Act does not recognize or allow. The eighth extension is also structured to address litigation uncertainty, not to return borrowers to the financial position that they would have occupied absent the current phase of the pandemic, a core requirement under the HEROES Act. The suit also says that the Department adopted the extension in an arbitrary and capricious manner without following mandatory procedural requirements. SoFi urges the court to invalidate the eight extension and, at a minimum, require repayment by borrowers who are not eligible for student-debt cancellation.
For further coverage, see these articles from Inside Higher Ed, CNN, and USA Today.

Senate Banking Committee Holds Hearing with Federal Reserve Chairman Powell, Inflation and Interest Rate Hikes Are Primary Focus

Today, the Senate Banking, Housing, and Urban Affairs Committee held a hearing titled, "The Semiannual Monetary Policy Report to Congress," with Federal Reserve Board of Governors Chairman Jerome Powell.

In his opening statement, Chairman Sherrod Brown said that the purpose of the hearing was to investigate the effectiveness of the Federal Reserve's actions to combat inflation, with a particular emphasis on how those actions affect American jobs. He stated that consumer prices are too high across many parts of the economy, causing harm to citizens who work hourly jobs, seniors on fixed income and social security, and individuals who get their income from a paycheck once a month rather than from an investment portfolio. He added that it is these Americans who will suffer the most if the Fed's actions to combat inflation go too far. The Chairman continued that the central bank's tools are only one part of the fight against inflation. He remarked that raising interest rates cannot rebuild supply chains, fix demand imbalances leftover from the COVID-19 pandemic, or stop big corporations from exploiting crises to raise prices on goods. He cited a Chief Economist at UBS who reported that big corporations have taken advantage of circumstances to expand profit margins, and that the broadening of inflation beyond commodity prices is for the purpose of profit margin expansion. He expressed concern with high interest rates, falling wages, and increasing unemployment, all of which he deemed hallmarks of failed policies that help Wall Street and wealthy corporations. He stressed that inflation should not be entrenched in our economy.

Chairman Brown stated that there have been some encouraging trends, and there are ways the economy can bring prices down other than by lowering demand. He gave the options of speeding up and strengthening supply chains, bringing critical manufacturing back to the U.S., and rebuilding infrastructure. The Chairman concluded his remarks by saying that, for the first time in decades, workers are finally starting to hold power. He said that Americans have more opportunities now to demand raises, paid sick days, and retirement, and more Americans have the dignity that comes with a good job that they can use to provide for their family. He stated that "holding the debt ceiling hostage" for partisan politics threatens all Americans, and the U.S. Court of Appeals for the Fifth Circuit decision on the funding structure of the Consumer Financial Protection Bureau (CFPB) could inflict damage and instability on families and consumers, as well as many federal agencies.

In his opening statement, Ranking Member Tim Scott (R-SC) said that, in his view, progressives have caused the worst inflation in over 40 years by printing and spending trillions of dollars, catering to the radical left, and implementing poor policies. He added that inflation has been devasting for American families and, in order to reduce inflation, the Fed must step in to "cool the economy." He noted that he grew up in poverty and increases in gas prices will be devastating to poor families, single mothers, and seniors living on fixed incomes. He stated that progressives used the pandemic as a way to usher in a form of spending that takes money away from everyday Americans and directs it to the federal government. He stated that the nation should trust the American people so that the Fed does not have to intervene and raise interest rates. He stressed that inflation is a crisis, and it is devastating to working Americans.

In his testimony, Chairman Powell said that the central bank is acutely aware high inflation is causing significant hardship for Americans and is strongly committed to returning inflation to the 2 percent goal set by the Federal Open Market Committee (FOMC). He said that, over the past year, the Fed has taken forceful actions to tighten the stance of monetary policy, the full effects of which are yet to be felt. Chairman Powell then reviewed the current economic outlook saying that inflation has moderated slightly since the middle of last year as energy prices have declined, supply chain bottlenecks have eased, and rent prices have flattened. But he said that consumer spending in January may have been higher because of relatively warm weather and "the breadth of the reversal, along with revisions to the previous quarter, suggests that inflationary pressures are running higher than expected at the time of our previous [FOMC] meeting." The Chairman then discussed monetary policy saying that the FOMC has continued to tighten its stance and he continues to anticipate ongoing increases in the target range for the federal funds rate will be appropriate in order to attain a stance that is sufficiently restrictive to return inflation to 2 percent over time. "Although inflation has been moderating in recent months, the process of getting inflation back down to 2 percent has a long way to go and is likely to be bumpy," he said. "As I mentioned, the latest economic data have come in stronger than expected, which suggests that the ultimate level of interest rates is likely to be higher than previously anticipated. If the totality of the data were to indicate that faster tightening is warranted, we would be prepared to increase the pace of rate hikes." He concluded his remarks by stating that restoring price stability will likely require that the FOMC maintain a restrictive stance of monetary policy for some time, but this is essential to set the stage for achieving maximum employment and stable prices over the longer run.

During the question-and-answer session, Chairman Brown expressed concern about the central bank's continued increases in interest rates that may not tame inflation. Chairman Powell said that there are differences in today's economy v. past efforts but there continues to be mismatches in supply and demand. Sen. Mike Rounds (R-SD) said that the nation's inflation rate is directly tied to fiscal policy decisions made by the Biden Administration and questioned whether a tightening of monetary policy will tame inflation. Chairman Powell said that it is not the Fed's job to point fingers, it is to use its tools to get inflation down to the 2 percent benchmark. Sen. Bob Menendez (D-NY) urged Chairman Powell to weigh in in support of nominating more diverse members of the Board of Governors. He also asked the Chairman to comment on the impact of not raising the nation's debt limit. Chairman Powell said that is a policy decision and, at the end of the day, Congress needs to pass legislation to raise the limit in a timely way that allows the country to pay its bills. He said, failure to do so, could be extraordinary adverse and do long-term harm. Sen. John Kennedy (R-LA) asked the Chairman if federal spending drives economic output and if Congress can assist the central bank by reducing federal spending. He also said, without any help from Congress, the unemployment rate would have to go up to 7 percent in order to cool the economy. Sen. Kennedy asked the Chairman if he agrees that, if Congress would focus on fiscal policy and reduce federal spending, the Fed would not have to "put more people out of work." Chairman Powell said that it would seem the logic is correct. Sen. Jack Reed (D-RI) asked the Chairman to discuss how challenges in the global supply chain contributed to inflation. Chairman

Powell said that, initially, the supply chain was contributing to the increase in inflation, but it is now spreading to the housing industry. Sen. Reed asked the Chairman to comment on the Fifth Circuit's decision striking down the structure of the CFPB. Chairman Powell said that he would not comment on an active case before the U.S. Supreme Court.

Sen. Katie Britt (R-AL) asked the Chairman what factors the central bank is looking at when it comes to raising interest rates. Chairman Powell said that the Fed looks at the goods, housing, and service sectors to see economic output. He said that the Fed raised rates pretty quickly last year and would wait to see the full effect of past hikes. Sen. Elizabeth Warren (D-MA) criticized the central bank's actions to raise interest rates, thus "putting more Americans out of work." Sen. Jon Tester (D-MT) asked the Chairman to compare the inflation rate of the United States with the rest of the world. Chairman Powell said that it is hard to make the case that the Fed has overtightened monetary policy and that further rates may be on the table. He said that rates in the United States is comparable to Canada but lower than Europe.
For additional coverage, including an archived webcast of the hearing, visit the committee website or see these articles from Roll Call and NBC News.

Federal Reserve Releases Consumer Credit Report, Shows Increase of 3.7 Percent for January

Today, the Federal Reserve released its Consumer Credit - G.19 Report, which shows that consumer credit increased at a seasonally adjusted annual rate of 3.7 percent in January 2023. Revolving credit (mostly credit card debt) increased at an annual rate of 11.1 percent, while nonrevolving credit (mostly auto loans and student loans) increased at an annual rate of 1.2 percent. Total outstanding consumer credit stood at $4.796 trillion at the end of January, up $14.8 billion from December. During the month, revolving credit increased by $11.2 billion and nonrevolving credit increased by $3.6 billion. Nonrevolving debt owned by the federal government (mostly Direct Loans) increased by $19.7 billion.

California Department of Financial Protection and Innovation Releases Second Modification to Rules Implementing Student Loan Servicing Act

Yesterday, the California Department of Financial Protection and Innovation published the text of a second modification to state regulations associated with implementing recent changes to the Student Loan Servicing Act. According to the notice, the proposed amendments revise the definition of "education financing products" to include private student loans which are not traditional loans; clarify that the payment cap, which is the maximum amount payable under an income share agreement, may be expressed as an Annual Percentage Rate or an amount advanced, covered, credited, deferred, or funded; and specifies that, if a servicer has not posted a cut off time for electronic payments, a payment made by 11:59 p.m. Pacific Time on the due date shall be credited as of that date and count as an on-time payment. Public comments on the second modifications must be submitted on or before March 23, 2023.

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:

- (CB-23-06) Campus-Based XML Schema Version 1.0a
- Comment Request: Student Assistance General Provisions-Subpart J-Approval of Independently Administered Tests
- (GENERAL-23-12) FSA Partner Connect – FSA Partner Connect Website Updates Coming March 2023

General News

Inside Higher Ed reports that the recent changes proposed by the U.S. Department of Education to federal student loan repayment could make the cohort default rate a poor measure of quality.

The Wall Street Journal publishes a column asking when federal student loan payments will resume and says that borrowers should make a student loan repayment strategy now rather than waiting for the payment pause to end to ease the transition back into repayment.

The Hill reports that the current impasse over the federal student loan forgiveness threatens President Joe Biden's promise to young voters.

Higher Ed Dive reports that U.S. News and World Report is escalating the battle over its rankings system, saying 'elite' colleges do not speak for higher education.

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