NCHER BRIEFING

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NCHER Spring Legal Meeting to be Held on April 20th: Register Today!

NCHER will hold the Spring Legal Meeting on Thursday, April 20, 2023, at the law offices of Ballard Spahr (1735 Market Street, 51st Floor) in Philadelphia, PA. This one-day meeting should be of interest to lawyers and non-lawyers alike. The registration fee is $400 for members and $500 for nonmembers. For planning purposes, you can assume that the meeting will start at 9:00 am and end by 5:00 pm. There are a number of hotels within walking distance of the law firm. For registration information, including a non-exclusive list of hotels, visit the NCHER website.

While the program planning committee is currently finalizing the agenda, we expect the agenda will include the following sessions:

- A Washington Update that will discuss recent developments around federal student loan forgiveness and the new income driven repayment plan.
- An update on the Consumer Protection Financial Bureau, including a discussion of the discussion of the U.S. Court of Appeals for the Fifth Circuit challenging the Bureau's structure.
- A discussion of the U.S. Department of Education's recent guidance on third party servicing, and several guarantor-related matters such as special mandatory assignment, Operation Fresh Start, and voluntary flexible agreements.
- Sessions on privacy and security developments, including new state rules; the impact of new advances in artificial intelligence; bankruptcy developments; new Telephone Consumer Protection Act and related state rules; and insurance (what's available and how much protection is provided).

NCHER is currently making arrangements for members to attend the Spring Legal Meeting remotely, though registrants should be aware that active participation for remote registrants will be limited. Please indicate when registering whether you will attend in person or virtually. If you have any questions, please contact Shelly Repp (srepp@ncher.org; 202-494-0948).

We look forward to seeing you in Philadelphia!

White House Releases President's Budget Request for FY 2024, Seeks 14 Percent Increase in Education Spending

Today, the White House Office of Management and Budget (OMB) released the President's budget request for Fiscal Year 2024, which calls for increasing non-defense federal spending by 7 percent and boosting military spending by 3.2 percent while forcing the wealthiest households to pay more in taxes.

The budget request for the U.S. Department of Education includes $90 billion in discretionary funding for the agency, a nearly $11 billion increase or 13.6 percent in funding compared to Fiscal Year (FY) 2023. The budget request includes the following items of interest to the NCHER membership:

- Pell Grants: The budget request includes $24.3 billion in discretionary funding and $8 billion in mandatory funding for the Pell Grant program, which would increase the maximum award by $820 to $8,215 for the 2024-2025 school year, helping an estimated 6.7 million students from low- and middle-income backgrounds overcome financial barriers. The budget says that this increase "continues to prioritize doubling the maximum award by 2029." The budget also states that the Administration intends to work with Congress to ensure student financial aid for Deferred Action for Childhood Arrivals recipients, commonly known as DREAMers.
- Campus-Based Aid Programs: The budget requests $910 million for Supplemental Educational Opportunity Grants and $1.23 billion for Federal Work Study, flat funding for both programs as compared to FY 2023 funding levels.
- TRIO and GEAR UP: The budget requests $1.3 billion for Federal TRIO Programs to provide services to encourage underserved individuals to enter and complete college and postgraduate education. It also requests $408 million to assist middle and high school students in preparing for college through the Gaining Early Awareness and Readiness for Undergraduate Programs.
- Free Community College: The budget request includes $90 billion in mandatory funding for a partnership between the federal government and states, tribes, and territories to ensure that first-time students and workers wanting to reskill can enroll in a community college to earn a degree or credential for free. The budget also includes $500 million in discretionary funding for a free community college program that offers preparation in in-demand industries that meet benchmarks for wages and employment.
- Postsecondary Student Success Program: The budget requests $165 million for the Postsecondary Student Success Grant program, which provides grants to states, institutions of higher education, and systems of institutions to implement or expand evidence-based, institutional level retention and completion reforms that improve student outcomes.
- High School to Postsecondary Education Transition: The budget includes $200 million for a new Career-Connected High School program to support competitive grants to partnerships of local educational agencies, institutions of higher education, and employers to increase the integration and alignment of the last two years of high school and the first two years of postsecondary education, in order to improve postsecondary and career outcomes for all students, including students of color and students from low-income backgrounds.

- Student Aid Administration: The budget requests $2.7 billion for the Student Aid Administration account to administer federal student aid programs, an increase of approximately $6240 million. The budget states that the increase would allow Federal Student Aid to continue to operate the student aid programs, implement critical improvements to student loan servicing, continue to modernize its digital infrastructure, and ensure successful administration of the financial aid programs through a simplified and streamlined application process for students and borrowers.

The budget request also includes language to permanently extend the provision in the American Rescue Plan Act that would eliminate the tax consequences associated with borrowers who have their student loans forgiven, including debt that is discharged under income-driven repayment programs. The original provision included in the American Rescue Plan Act expires at the end of 2025.

For further coverage, see the following articles:

- Statement by U.S. Secretary of Education Miguel Cardona on the President's Fiscal Year 2024 Budget | U.S. Department of Education
- White House blueprint would raise taxes, boost spending - Roll Call
- Breaking down Biden's budget: Here's what's in it | The Hill

House Education and the Workforce Committee Democrats Reintroduce LOAN Act

Today, House Education and the Workforce Committee Ranking Member Bobby Scott (D-VA), Higher Education and Workforce Development Subcommittee Ranking Member Frederica Wilson (D-FL), and other Democratic Members introduced the "Lowering Obstacles to Achievement Now (LOAN) Act, which aims to lower the cost of college for current and future student borrowers and their families. The legislation will be cosponsored by Rep. Mark Takano (D-CA), Rep. Raúl Grijalva (D-AZ), Rep. Alma Adams (D-NC), Rep. Lucy McBath (D-GA), Rep. Joe Courtney (D-CT), Rep. Suzanne Bonamici (D-OR), and Rep. Gregorio Kilili Camacho Sablan (D-NMI).

According to a fact sheet on the bill, the LOAN Act would build on the White House's plan to forgive up to $20,000 in outstanding federal student loan debt for millions of borrowers and address the root causes of the student debt crisis, including the declining value of the Pell Grant and the student loan system. The legislation would:

- Double the Pell Grant by increasing the maximum award over 5 years to $14,000, building on the $500 increase in the Consolidated Appropriations Act.
- Improve the Public Service Loan Forgiveness (PSLF) program by shortening the time to forgiveness and broadly codifying the current PSLF waiver.
- Make loans less expensive by expanding access to subsidized loans, eliminating capitalization of interest including after forbearance and deferment, and creating a safety net for vulnerable borrowers.
- Lower interest rates by tying interest rates for all new federal student loans to the ten-year Treasury note, but ensuring that no new loan has an interest rate higher than five percent, and allowing both federal and private borrowers to take advantage of these lower rates.

"The LOAN Act is the next step we must take to confront the student debt crisis," said Ranking Member Scott. "This legislation would lower the cost of college for students and families by doubling the Pell Grant, improving the Public Service Loan Forgiveness program, lowering interest rates, and making other critical reforms to streamline our student loan system. By making loans cheaper to take out and easier to pay off, the LOAN Act will help improve the lives of student loan borrowers—both now and in the future." For a title-by title of the LOAN Act, click here.

House Financial Services Committee Republicans Introduce Legislation to Reform CFPB's Funding and Structure

Today, House Financial Services Committee Republicans introduced nine pieces of legislation in their quest to reform the Consumer Financial Protection Bureau (CFPB). The proposed bills include the following:

- The CFPB Dual Mandate and Economic Analysis Act, by Rep. Tom Emmer (R-MN), to amend the purpose of the CFPB to focus its work on enforcing federal consumer financial law consistently for the purpose of strengthening private sector participation in markets without interference or subsidies from the federal government to increase competition and enhance consumer choice. The legislation would also establish an Office of Economic Analysis to review and assess the impact of all proposed guidance, orders, rules, and regulations of the Bureau.

- The Taking Account of Bureaucrats' Spending (TABS) Act, introduced by Rep. Andy Barr (R-KY), which would change the CFPB into an independent agency named the Consumer Financial Empowerment Agency and transition the agency's budget to the regular appropriations process.
- The CFPB-IG Reform Act, introduced by Rep. Blaine Luetkemeyer (R-MO), which would require Senate confirmation of an Inspector General of the CFPB.
- The Transparency in CFPB Cost-Benefit Analysis Act, introduced by Rep. Alex Mooney (R-WV), to enhance the rulemaking requirements of the CFPB such as requiring each rulemaking to include a need for the proposed regulation and an examination of why the Bureau undertook the proposed regulation and why the private market and state could not adequately address the problem.
- The CFPB Whistleblower Incentives and Protection Act, introduced by Rep. Tom Emmer (R-MN) which would provide for whistleblower incentives and protections for CFPB employees.
- The Consumer Financial Protection Commission Act, introduced by Rep. Blaine Luetkemeyer (R-MO), which would make the CFPB an independent Consumer Financial Protection Commission consisting of five members who would be appointed by the President and confirmed by the U.S. Senate.
- The Encouraging Innovation and Protecting Consumers Act, which would restore the functions of the Office of Innovation at the CFPB.
- The Making the CFPB Accountable to Small Businesses Act, introduced by Rep. Scott Fitzgerald (R-WI), which requires the CFPB to ensure its rulemaking process examines the impact of the proposed rules on small entities.
- The Federal Reserve Loss Transparency Act, introduced by Rep. French Hill (R-AR), which would prohibit the Federal Reserve from transferring funding to the CFPB if a reserve bank has incurred an operating loss in the most recently completed calendar quarter until the loss is offset with subsequent earnings.

Prior to introduction, House Financial Services Committee Ranking Member Maxine Waters (D-CA) and Senate Banking, Housing, and Urban Affairs Committee Sherrod Brown (D-OH) released a joint statement in opposition to the new bills: "Make no mistake. This is about whose side you're on: workers and consumers or big corporations and Wall Street. This is not reform for the benefit of consumers, it is another page pulled from the same Republican playbook designed to destroy the CFPB and its work to empower consumers. The CFPB has made major progress in supporting consumers, combatting discrimination and junk fees, holding large financial institutions accountable for repeatedly harming consumers, and so much more. As Ranking Member of the House Financial Services Committee and Chair of the Senate Banking and Housing Committee, we will continue to work with our colleagues to stop any anti-consumer bill and protect the CFPB so that consumers can continue to have an agency solely dedicated to protecting their hard-earned money."

House Financial Services Subcommittee Holds Hearing on CFPB Reform

Today, the House Financial Services Subcommittee on Financial Institutions and Monetary Policy held a hearing entitled, "Consumer Financial Protection Bureau (CFPB): Ripe for Reform." The goal of the hearing was to examine the leadership structure, funding, budget, and operations of the CFPB and areas in which reforms are needed. In his opening remarks, Subcommittee Chairman Andy Barr (R-KY) called the CFPB "the most unchecked, unaccountable agency in the whole federal government" saying that it does not have an executive board, an independent Inspector General (IG), or any true oversight of the Director, which is unlike virtually every other federal agency. He said that he recently introduced the Taking Account of Bureaucrats Spending (TABS) Act, which would move oversight and funding control of the Bureau to Congress. He said that the subcommittee hearing would also examine legislation to reform the CFPB's leadership structure by establishing an independent IG and creating a multimember bipartisan commission; focus on the requirements for funding the agency's budget; require more oversight and quantitative analysis of the rulemaking process; and protect small businesses and whistleblowers. "These bills are first steps towards reforming the unaccountable CFPB," Chairman Barr said. In his opening statement, Subcommittee Ranking Member Bill Foster (D-IL) discussed the past of the CFPB, calling the agency "one of the nation's most important financial regulators." He said that, over the past ten years, the Bureau has helped "save the U.S. economy."

In his testimony, American Financial Services Association Chief Executive Officer Bill Himpler said that he will discuss how the CFPB refusal to operate within the law, and its unhelpful rhetoric, harms both consumers and creditors. He discussed how the Bureau seeks to impose limits on arbitration, despite its own study showing that arbitration benefits consumers; how its focus on press releases and rhetoric over rules meaning consumers remain struggling; how it is using regulation by enforcement to change the Truth-in-Lending Act with little concern for harm to consumers; that regulation via press release can have serious consequences for consumers; and, instead of going after well-regulated financial institutions and products, the CFPB should pursue bad actors such as credit repair organizations. In his testimony, Patomak Global Partners Managing Director Brian Johnson provided several examples of what he said demonstrates that the CFPB lacks adequate internal or external controls to ensure it operates within the law. He said that the absence of these controls has undermined the rule of law, which compels the conclusion that the CFPB is ripe for reform.

In her testimony, Pacific Legal Foundation Attorney Jessica Thompson said that the CFPB is in desperate need of reform due to its unconstitutional structure and, in turn, the power it claims to wield in ways that harm the American financial services industry. She stated that the Bureau's funding mechanism clearly violates the separation of powers clause of the U.S. Constitution, the CFPB evades the rulemaking process established under the Administrative Procedures Act resulting in policies that are harmful to the rule of law and consumer access to financial services, and the Bureau uses consent orders to announce new legal theories. Ms. Thompson urged Congress to bring the Bureau under the Congressional appropriations process and conduct oversight hearings to review the breadth of authority delegated to the CFPB. In his testimony, Competitive Enterprise Institute Attorney Devin Watkins discussed and urged Congress to end the CFPB's funding structure that operates outside of the appropriations process, require that no money be spent on enforcement that is not based on rulemaking, should not und agency expenditures on enforcement actions that impose penalties or monetary finds without jury trials in Article III Courts, limit the CFPB's authority to practices that are not common in the industry by providing incentives for the exercise of legislative authority on large issues, and define the mission of the CFPB by specifying the nature of 'Deceptive, Unfair, and Abusive' Practices.

In his testimony, Minnesota Attorney General Keith Ellison discussed the work that his office, the CFPB, North Carolina and the Los Angeles City Attorney's Office performed when it sued a third-party debt relief company that falsely promised to help people pay off their student loans and obtain student loan forgiveness in the process. He said that, together, they shut the company down and the company issued refund checks to consumers. Without the CFPB, the states would not have been able to get that result. "Not only did the Bureau provide resources to give us the bandwidth to bring this case, but it is only because of the CFPB's civil penalty fund that we were able to secure $95 million in refunds to compensate victims when the companies and people we sued couldn't afford to pay the full amount," Attorney General Ellison said. "If not for the CFPB, these consumers would have likely received only a fraction of what they paid, if anything. Instead, they have been made whole and can move forward with their lives. This is just one example of dozens where states like Minnesota have joined with the Bureau to act against companies and hold them accountable for defrauding consumers." He said that the CFPB is also an essential cop on the consumer protection beat, particularly in areas where states have inherent challenges in regulating fraud and abuse, and serves a critical informational function, conducting and publishing studies on relevant financial issues and sharing information that allows to monitor market practices and trends. He concluded his remarks by asking the Subcommittee to consider what happens if the CFPB funding structure is overturned such as the actions of the Federal Reserve and other independent agencies, and functions of the Bureau like debt collection.

For further coverage, including an archived webcast of the hearing, visit the committee website.

U.S. Department of Education News

For today's *Federal Register*, click here.

The following announcement was posted to the Federal Student Aid's Knowledge Center Website today.

- Comment Request: Revocation of Consent To Share Federal Tax Information Form

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General News

CNBC discusses the possibility that Justice Amy Coney Barrett could be a swing vote on determining whether the U.S. Supreme Court will overturn the U.S. Department of Education's federal student loan forgiveness program.

Inside Higher Ed reports on the decline in the number of transfer students going from community college to a four-year institution.

University Business reports that the Maine Legislature is considering legislation that would waive 50 percent of tuition for University of Maine System students.

The Hill reports that the U.S. Senate recently voted to confirm the nomination of Danny Werfel to serve as the next Commissioner of the Internal Revenue Service.

An online version of this Daily Briefing is available to view and print from the **Daily Briefing Section** of the **NCHER e-Library**.

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