NCHER BRIEFING

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NCHER Webinar on the Department of Education's Dear Colleague Letter on Third Party Servicers

This Monday, March 27th from 2:00 – 3:00 p.m. ET, NCHER will hold a webinar to discuss the U.S. Department of Education's Dear Colleague Letter on third-party servicing. On February 15th, the Department released updated guidance to clarify when organizations that contract with institutions of higher education are considered third-party servicers and, thereby, subjected to disclosure, audit, and liability requirements. In the guidance, the Department added recruitment and retention services, software services used to administer Title IV programs, and the provision of educational content and instruction to those entities that are subject to these requirements and codified the prohibition on foreign-owned providers. The effective date for this guidance is September 1, 2023 and the Department is accepting written comments through March 30, 2023. Interested parties have raised concerns about the impact of the expansion of the definition of third-party servicers and how many entities will now fall under the definition. During the webinar, speakers from Thompson Coburn LLP will discuss the Dear Colleague Letter and the potential implications for those industry participants that are current or potential third-party servicers. A question-and-answer session will follow the discussion. Members can register for the webinar on the NCHER website.

House Higher Education and Workforce Development Subcommittee Holds Hearing on Department of Education's Student Loan Policies

Today, the House Education and the Workforce Subcommittee on Higher Education and Workforce Development held a hearing titled, "Breaking the System: Examining the Implications of Biden's Student Loan Policies for Students and Taxpayers." In his opening statement, Subcommittee Chair Burgess Owens (R-UT) said that the purpose of the hearing was to address one of the greatest concerns to American's livelihood, which is to investigate how the Biden Administration is pushing a "free college" initiative through loan forgiveness. He stated that the federal student loan forgiveness plan has turned the student loan program into targeted grants instead. He added that, instead of working with Congress to fix the current loan system, the administration has taken a "go alone approach," that will cost the American taxpayers more than $400 billion dollars. He added that, just yesterday, one of the top federal student loan servicers said that it would lay off half of its workforce, which makes the ability for Americans to repay their loans on time and in an efficient manner, even more difficult. Chairman Burgess continued by stating that, because of this, the U.S. Department of Education is not prioritizing good stewardship or care of taxpayer dollars. He said the administration's proposed Income-Driven Repayment (IDR) plan was also out of touch with reality, as the estimated costs were only half of what the Congressional Budget Office predicted in the last week.

In her opening statement, Subcommittee Ranking Member Frederica Wilson (D-FL) explained how her own path to economic mobility and home ownership began with her very first job as a teacher. She explained that, as the federal government began the student loan delivery in the 1970's, Pell Grants also began to be offered, but these grants have not kept up with the constantly increasing cost of colleges. She stated that it is unfair the Republican majority has complained and disagreed with the President's proposed student loan cancellation while bailing out other industries, but not directly addressing the student loan debt of American taxpayers. She continued by mentioning that some Members of Congress have even had their loans forgiven during the COVID-19 pandemic, but the Republican majority has continued to ignore that student loan forgiveness that is needed by the children in this country. She added that, despite these challenges, Congress has the responsibility to directly address the rising college costs and broken federal aid system in this country.

In his testimony, Mark Goldwein, Senior Vice President and Senior Policy Director for the Committee for a Responsible Federal Budget, stated his belief that there is no question the U.S. higher education system needs to be reformed. He said that costs are too high, outcomes are too variable, and accountability is "mostly lacking," in addition to many borrowers feeling burdened by high levels of student debt. He said that, as the country considers reform, it should focus on policies that are fiscally responsible for taxpayers, that are justified on economic grounds, that are targeted to those most in need, and that improve quality and affordability in higher education. He said the Biden Administration's ongoing federal student loan payment pause, debt cancellation efforts, and IDR reforms do not meet the criteria he outlined, adding that these efforts could worsen structural issues in the current federal financial aid system.

In his testimony, Dr. Adam Looney, Director of the Marriner S. Eccles Institute and Clinical Professor of Finance, David Eccles School of Business at the University of Utah, sai that the U.S. system of higher education finance is in crisis. He said too many students enroll in programs that are too expensive or that do not lead to good jobs and leave them with debt that they cannot afford, which in turn burdens taxpayers. He said recent executive actions are "poorly targeted" to help struggling borrowers, and instead benefit "highly educated, well-off students," are costly to taxpayers, and will increase both tuition charged by institutions and enrollment at "poor-quality institutions." He asserted that cumulative executive actions are expected to cost close to $1 trillion, exceeding the amount that will be spent on the Earned-Income Tax Credit or on food stamps over the next decade. He said the federal student loan programs are not means-tested and that eligibility is based on whether you go to college and how long you have enrolled and whether you go to graduate school. He said expansive debt relief policies are regressive unless they are well-targeted, adding that in the case of the Department's proposed forgiveness plan, by forgiving debts of students who never received a Pell Grant, a third of the $400 billion cost will go to students who are "well-educated, mostly white and disproportionately from high-income families."

In his testimony, Sameer Gadkaree, President of The Institute for College Access and Success, said that a college degree remains a strong investment for most Americans because college graduates earn a "substantial wage premium" and are much less likely to experience poverty than individuals without a credential or degree. He said that, to cover the cost of an average four-year public college, students from families making $30,000 or less would need to spend 93 percent of their total family income to cover the cost, and two-thirds of their total family income for an average two-year institution. He continued by saying that the President's one-time federal student loan forgiveness program seeks to address the growth in college costs, the vulnerable students who accrued college debt but do not have a degree, and the unique economic challenges created by the pandemic. He said that one-third of the relief would go to borrowers over 40 years old and that the effort would reduce the racial wealth gap. He said as the Administration transitions borrowers back into repayment, the Department is taking "long-overdue steps" to reform the repayment system and ensure that borrowers can access existing repayment options.

In his testimony, Carlo Salerno said that the combined public and private investment in college access and affordability costs hundreds of billions of dollars annually. He said the challenges that borrowers must face to finance a degree are well-documented and are shaped by policymakers' promises and actions. He stated that, based on actions from the President's loan forgiveness proposal to the new IDR plan, the Biden Administration has indicated that its priority is student loan debt relief as opposed to taking action on things that prevent the need for debt relief. He said that, without meaningful program reform from Congress, loan balances, delinquencies, and defaults are "almost certain" to continue to grow over time. He said solutions to student loan debt problems include promoting college affordability and keeping borrowing rates low while continuously keeping degree completion and loan repayment high.

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

Higher Education Advocacy Groups Sign Letter Urging Congress to Double Pell Grant

SEveral higher education organizations recently sent a letter to the House and Senate Appropriations Committees urging Congress to increase the maximum award for the Pell Grant program to $13,000. The letter notes that Congress has already made "tremendous progress" toward this goal in the past three years, with the maximum award increasing by over $1,000 and the President's budget request for Fiscal Year 2024 proposing an additional $820 increase. "Raising the maximum Pell award to $13,000 is an effective, targeted way to make college more affordable and lower student debt burdens for millions of students," the letter states.

Department of Education Announces Public Hearings on Higher Education Negotiated Rulemaking

Today, the U.S. Department of Education announced that it will hold virtual public hearings on April 11, 12, and 13 to receive stakeholder feedback on potential issues for future rulemaking sessions. Following the public hearings, the Department will finalize the issues to be addressed through rulemaking and solicit nominations for non-federal negotiators who can serve on the negotiated rulemaking committee(s), which will convene in fall 2023.

According to the announcement, the Department is proposing the following topics for regulation in the hearing notice but invites comment on any regulatory issue that can improve outcomes for students:

- The Secretary of Education's recognition of accrediting agencies and related issues.
- Institutional eligibility, including state authorization.
- Third-party servicers and related issues.
- The definition of distance education as it pertains to clock hour programs and reporting students who enroll primarily online.
- Return of Title IV funds.
- Cash management to address disbursement of student funds.

- Federal TRIO programs.

The Department said that it is also inviting public input on how the agency could, through its Title IV regulations, help improve borrowers' understanding of repayment options and ensure borrowers select an income-driven repayment plan - instead of enrolling in deferment or forbearance - if doing so would be in their best interest.

In a statement, Education Secretary Miguel Cardona said, "The Department's primary responsibility is to serve students and help them succeed. That means we must continue to take a look at a range of regulations to ensure that colleges and programs serve our students well and that Department processes work in their best interest."

For further information on the public hearings, click here. For more information on the negotiated rulemaking process, click here.

Second Circuit Issues Decision Upholding Funding Structure of the CFPB, Says "Cannot Find Any Support" for Fifth Circuit Ruling

Today, the U.S. Court of Appeals for the Second Circuit issued an opinion upholding the funding structure of the Consumer Financial Protection Bureau (CFPB) as constitutional. The unanimous ruling from a three-judge panel came in a case where the Law Offices of Crystal Moroney PC, a debt collection law firm based in New York, attempted to vacate a civil subpoena the Bureau issued in June 2017. The U.S. District Court for the Southern District of New York ruled in the CFPB's favor in August 2020. At that time, the court held that the U.S. Supreme Court's decision in Seila Law LLP v. CFPB, which ruled that the single-director leadership structure where the President could only fire the Director for "inefficiency, neglect of duty, or malfeasance in office" violated the separation of powers doctrine, cured the Bureau's deficiencies. The law firm argued, in part, that the CFPB's funding through the Federal Reserve and outside of the Congressional appropriations process violates the U.S. Constitution's Appropriations Clause and nondelegation doctrine, and that Seila did not address the issue. The Second Circuit panel rejected that argument and said that Selia was the last word on the CFPB's constitutionality. "The Court has consistently interpreted the Appropriations Clause to mean simply that 'the payment of money from the Treasury must be authorized by a statute,'" the Second Circuit said.

The U.S. Supreme Court is set to hear arguments in its upcoming October term in the CFPB's appeal of an October 2022 ruling by the U.S. Court of Appeals for the Fifth Circuit in Community Financial Services Association of America v. CFPB that the Bureau's funding violates the Constitution's appropriations clause and the agency should be subject to Congressional appropriations. The Second Circuit said in its ruling that it "cannot find any support" for the Fifth Circuit's ruling on the CFPB's funding in Supreme Court precedent.

For additional coverage, see this article from Bloomberg Law.

CFPB Announces $11 Million for Consumers Harmed by Third-Party Debt Relief Operation

Today, the Consumer Financial Protection Bureau (CFPB) announced that it had allocated $11 million in loan relief for those borrowers who were charged illegal upfront fees for services provided by GST Factoring. For background, in 2020, the CFPB filed a complaint in the U.S. District Court for the Central District of California against GST Factoring, Inc., which runs a student loan debt relief business in Texas, and two of its owners, Rick Graff and Gregory Trimarche, as well as Champion Marketing Solutions, LLC, a customer service and marketing company, and its owner, Scott Freda. The CFPB also filed suit against four attorneys who provided the debt relief services in connection with GST Factoring and Champion Marketing: Amanda Johnson, David Mize, Jacob Slaughter, and Daniel Ruggiero. The CFPB alleged that the companies, their owners, and the attorneys were part of a nationwide debt relief operation that charged approximately $11.8 million in illegal upfront fees to thousands of consumers with private student loan debt. The Telemarketing Sales Rule (TSR) states that it is illegal to request or receive any fees for debt-relief services sold through telemarketing before the debt is settled or renegotiated.

The complaint alleged that, starting in 2015, the defendants violated the TSR's prohibition on requesting or receiving advance fees for debt relief services, or substantially assisted others in violating this prohibition by charging illegal advance fees purportedly to renegotiate student loan debt. Using telemarketing campaigns, the debt relief operation led consumers to believe that they were working solely with an attorney, but in fact, the fees went to GST Factoring, which distributed the funds to the participants in the scheme. The complaint also alleged that consumers were encouraged to stop paying their student loans altogether. Judgments were entered against all defendants and included total monetary judgements of approximately $11.8 million to redress harmed consumers and penalties totaling over $30 million, some of which was suspended based on a documented inability to pay.

For additional coverage, see this article from Business Insider.

U.S. Department of Education News

For today's Federal Register, click here.

The following announcement was posted to Federal Student Aid's Knowledge Center:

- Comment Request: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

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General News

The Washington Post reports private student loan borrowers were not included in the Sweet vs. Cardona settlement that was reached to address concerns by a class of borrowers who alleged they were defrauded by their schools.

Inside Higher Ed reports on the investigation by House Republicans into the weaponization of the federal government in higher education.

The Chronicle of Higher Education highlights a new report that found "emotional stress" remains a top reason as students consider "stopping out," or temporarily withdrawing from higher education.

Yahoo Finance reports that Nelnet recently announced that it will reduce its staff due to contract changes with the U.S. Department of Education impacting federal student loan servicing.

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