NCHER BRIEFING

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NCHER Weekly Rundown

Weekly Rundown

The NCHER Weekly Rundown, which includes the latest information on important events in Washington, DC, is available today and can be downloaded from the NCHER website.

Senate Appropriations Committee Announces Hearing Schedule for FY 2024 Process; Education Secretary Cardona Slated to Testify in May

Last week, Senate Appropriations Committee Chairwoman Patty Murray (D-WA) and Ranking Member Susan Collins (R-ME) announced a tentative calendar for subcommittee hearings pertaining to the Fiscal Year 2024 budget and appropriations process. "These subcommittee hearings will provide an important opportunity for senators to assess our country's needs for the year ahead," said Chairwoman Murray and Ranking Member Collins. "We have an important responsibility to write our nation's spending bills in a way that will build a stronger economy, make our communities safer, and ensure we stay ahead of competitors like China. Let's get to work." Of interest to the NCHER membership, the Labor, Health and Human Services, Education, and Related Agencies Appropriations Subcommittee will hold a hearing on the budget request for the U.S. Department of Education with Education Secretary Miguel Cardona at 10:00 a.m. ET on Thursday, May 11, 2023. The committee notes that the list is not final; hearings listed can and will change and additional hearings may be announced.

GAO Releases Decision Determining Federal Student Loan Forgiveness Program Subject to Congressional Review Act

Last Friday, the U.S. Government Accountability Office (GAO) released a decision determining that the Congressional Review Act (CRA) applies to the U.S. Department of Education's federal student loan forgiveness program. The CRA lays out special procedures that Congress may use to overturn federal agency rules, as defined by the Administrative Procedure Act, via a joint resolution of disapproval that is "privileged" in the Senate, not subject to a filibuster, and requires a simple majority to pass in both chambers. In the decision, GAO concluded that the Department's use of the HEROES Act waivers and modifications provisions in this instance meets the definition of a rule under the CRA, the rule should have been published in the Federal Register, and the agency should have submitted a CRA report to Congress. The Department argued that the waivers and modifications provisions it used are not subject to the CRA because it was not a rulemaking but a one-time application of statutory authority.

After the decision, Senate Health, Education, Labor, and Pensions Committee Ranking Member Bill Cassidy (R-LA) announced that he and Sens. John Cornyn (R-TX) and Joni

Ernst (R-IA) would introduce a CRA resolution to overturn the student loan forgiveness plan. "President Biden's student loan scheme does not 'forgive' debt, it just transfers the burden from those who willingly took out loans to those who never went to college, or sacrificed to pay their loans off," said Ranking Member Cassidy. "Where is the relief for the man who skipped college but is paying off his work truck, or the woman who paid off her loans and is now struggling to afford her mortgage? This resolution prevents these Americans, whose debts look different from the favored group the Biden administration has selected, from picking up the bill for this irresponsible and unfair policy."

House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) also issued a statement in which she said, "the Government Accountability Office confirmed today what the American people already knew: the President cannot rule by press release. The Congressional Review Act is one of Congress's key tools to hold the executive branch accountable for not implementing laws with fidelity. I look forward to working with my colleagues in the House and the Senate to hold the Biden administration accountable for this illegal, unfair, and costly student loan bailout."

Department of Education Updates Language on One-Time IDR Account Adjustment

Last Thursday, the U.S. Department of Education's Office of Federal Student Aid (FSA) updated the website dedicated to its Income-Driven Repayment (IDR) account adjustment policy to say that borrowers now have until the end of 2023 to access the initiative. For background, in April 2022, the Department announced a one-time adjustment to borrower accounts that will count previous time toward IDR forgiveness. Previously, borrowers who had loans under the Federal Family Education Loan Program, Perkins Loan Program, and Health Education Assistance Loan Program were told they had until May 1, 2023 to consolidate into the Direct Loan program to take advantage of the count adjustment. But FSA extended the timeframe for an additional eight months.

House Appropriations Committee Ranking Member DeLauro Receives Letter Detailing Impact of Cutting Federal Spending to 2022 Levels

House Appropriations Committee Ranking Member Rosa DeLauro (D-CT) recently released a letter from the U.S. Department of Education on how it would respond to spending cuts that are being proposed by House Republican leaders. Earlier this year, Ranking Member DeLauro requested information from each federal agency detailing the impact of capping discretionary spending for the upcoming Fiscal Year 2024 at 2022 levels as Republicans have floated as they begin the budget and appropriations process. In the letter, Education Secretary Miguel Cardona addressed numerous areas that would be affected by federal funding cuts, including past increases in Pell Grants and programs to administer student aid. Regarding the effects on Pell Grants, Secretary Cardona stated that, "a reduction to the FY 2022 enacted level would likely have a minimal effect on students and parents, while a reduction of 22 percent from currently enacted levels would likely reduce the maximum award by nearly $1,000, decreasing aid to 6.6 million recipients and eliminating aid altogether for approximately 80,000 students." Regarding programs for administering student aid, Secretary Cardona stated that, "a reduction of 22 percent from currently enacted levels would cut $468 million in federal support to determine, disburse, and service student aid. This level of funding would have devastating effects on student and parent interactions with the Department, as well as on their ability to successfully apply for and receive student aid."

Following the letter's release, Ranking Member DeLauro released a statement saying, "The draconian cuts would take away the opportunity for 80,000 people to attend college and impact all 6.6 million students who rely on Pell Grants."

For additional coverage, see this article from Business Insider.

ARRC Publishes Statement on Implementation of Hardwired Fallback Language

Last week, the Alternative Reference Rates Committee (ARRC) published a statement that reflects the committee's selections and recommendations to be applied in the determination of the Benchmark Replacement, the Benchmark Replacement Adjustment, and the Recommended Replacement Index as these terms are used in the ARRC's recommended hardwired fallback language. That language requires verification by the ARRC of certain recommendations, including: 1) the ARRC's selection or recommendation of a forward-looking SOFR [Secured Offered Financing Rate] term rate as a replacement for LIBOR [London Interbank Overnight Rate] for a given cash product; 2) the ARRC's recommendations of spread adjustments; and 3) the ARRC's recommendations of replacement indexes for use in consumer LIBOR products. The recommendations apply to the ARRC's recommended fallback language that has been incorporated into certain contract types, including floating rate notes, securitizations (including FFELP ABS), and variable-rate private student loans. The recommended replacement rate/index and recommended spread adjustment for each of these contract types are set forth in Appendix B. For consumer loans, including private student loans, the replacement rate/index is the Refinitiv Cash Fallback. The ARRC noted that its recommendations may also be adopted by parties that are able and choose to use its recommended fallbacks in legacy LIBOR contracts in which the replacement rate is determined by one or more parties to the contract rather than directly set by the terms of the contract. The ARRC emphasizes that its recommended spread adjustments set out in the statement are intended only for use in LIBOR contracts that fall back to SOFR and that they would not and are not intended to apply to new contracts. The ARRC further notes that its recommendations match the Board-selected benchmark replacements specified in the Federal Reserve Board's rule implementing the Adjustable Interest Rate Act.

U.S. Department of Education News

For today's Federal Register, click here.

General News

Higher Ed Dive examines how prisons are keeping federal student loan forgiveness to those who are incarcerated.

All4Ed (previously known as the Alliance for Excellent Education) recently published a report examining college and career readiness indicators and discussing whether they accurately reflect college and career outcomes.

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