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NCHER Spring Legal Meeting: Three Weeks Away, Register Today!

NCHER will hold its Spring Legal Meeting in just three weeks - on Thursday, April 20, 2023 at the law offices of Ballard Spahr in Philadelphia (1735 Market Street, 51st Floor). 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 more information or

to register, visit the [NCHER website](#).

The preliminary agenda includes many important topics of interest to the membership. This includes sessions such as a Washington Update that will cover student loan forgiveness and the new income driven repayment plan; an update on recent developments impacting the Consumer Financial Protection Bureau; a discussion of Federal Student Aid initiatives affecting guarantors and third-party servicers; opportunities and challenges of AI; federal and state privacy protections; bankruptcy developments; and insurance and risk management. While NCHER is making arrangements for a remote option, 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.

Attendees will need to make their own hotel reservations. There are several hotels within walking distance of the law firm. A non-exclusive list is posted on our website.

Finally, Ballard Spahr is reserving space in its suite at Citizens Bank Park for the Thursday (April 20) night game between the Philadelphia Phillies and the Colorado Rockies. Please let Shelly Repp know if you would like to stay for the game or if you have any additional questions. He can be reached at srepp@ncher.org.

We hope to see you in Philadelphia!

Federal Student Aid Posts Quarterly Portfolio Reports to FSA Data Center, Includes Information on Loan Volume, Delinquency and Default Rates

Yesterday, the U.S. Department of Education's Office of Federal Student Aid (FSA) published its [quarterly portfolio reports](#) on the FSA Data Center. The reports provide a detailed overview of the federal student loan portfolio, including information on loan volume, delinquency rates, and default rates. The reports also include data on loan disbursements and borrower demographics.

According to the report, as of December 31, 2022, the total outstanding principal balance of the federal student loan portfolio was \$1.64 trillion representing 43.8 million unduplicated recipients.. This represents a 4.6 percent increase from the same period in the previous year. The report also reveals that the overall delinquency rate for the

portfolio was 9.5 percent, which is a slight improvement from the same period in the previous year. Although there have been modest increases in balances for Federal Direct Loans, the balances of loans under the Federal Family Education Loan Program (FFELP) have been declining more rapidly, in part due to the temporary limited waiver for Public Service Loan Forgiveness (PSLF), which ended on October 31, 2022. The limited PSLF waiver encouraged FFELP borrowers to consolidate into the Direct Loan Program to apply for credits for past public service that ordinarily would not count toward PSLF. As of early February, approximately 453,000 borrowers have been approved for forgiveness under the limited waiver. As a result of these shifts, FSA now directly manages nearly 93 percent (or \$1.5 trillion) of the total federal loan portfolio. The remaining seven percent includes school-held Perkins Loans, lender-held FFELP loans, and FFELP loans held by guaranty agencies.

Similar to past reports, this quarterly report says that, as a result of special COVID-19 flexibilities for federal student loans, the number of recipients in repayment status has fallen sharply since March 2020. Almost 27 million Direct Loan recipients, with approximately \$1.1 trillion in outstanding loans, are in forbearance status, and more than 99 percent of these balances are in the special CARES Act forbearance. In fact, less than 330,000 Direct Loan recipients have opted out of the payment pause and thus were in an active repayment status as of December 31, 2022, compared to 18.1 million recipients in March 2020, shortly after the CARES Act became law. Despite the repayment pause affecting most borrowers, enrollment in income-driven repayment (IDR) plans had slightly increased during the COVID-19 emergency until recently. In September 2022, IDR enrollment among Direct Loan recipients decreased for the first time since public reporting began nine years ago. While the decrease was insignificant and is expected to be temporary, the decrease continued this quarter, going from 8.39 million recipients owing \$524 billion in December 2021 to 8.32 million borrowers owing \$518 billion in December 2022. These decreases are largely driven by the number of borrowers who have entered repayment during the COVID-19 emergency without selecting a repayment plan. These borrowers have immediately been transitioned into forbearance due to the COVID-19 emergency.

Finally, with almost all non-defaulted federal student loan borrowers now in forbearance, no new Direct Loan borrowers entered default since March 2020. In fact, the number of cumulative borrowers in default continues to decrease, now 4.7 million borrowers compared to nearly 5.0 million borrowers one year ago. The number of defaulted borrowers in FFELP has also decreased, now less than 3.4 million borrowers compared to

more than 3.5 million one year ago.

9th Circuit Issues Ruling Against Colleges' Attempt to Halt Sweet v. Cardona Settlement

Yesterday, the U.S. Court of Appeals for the Ninth Circuit unanimously denied the request of three institutions of higher education seeking to halt the settlement reached in Sweet v. Cardona, which will discharge the federal student loans for those borrowers who have long-standing borrower defense to repayment claims with the U.S. Department of Education. The settlement is expected to cover over 200,000 borrowers. While the Department had already begun processing relief for the vast majority of borrowers, processing of claims for those borrowers who attended Lincoln Technical Institute, American National University, and Everglades College, Inc. had been on hold. The colleges had appealed a lower court's approval of the settlement and argued that it was illegal and unfair. The appeals court ruled that the schools failed to show sufficient probability of irreparable harm, and ordered the schools to submit their opening briefs for the appeal by May 3, 2023. The Department previously stated that it was ready to begin the process of discharging loans for the borrowers who attended the three schools within two weeks of getting approval from the court.

ACE Sends Public Comments to Department of Education Expressing Concern with Dear Colleague Letter on Third-Party Servicing

Today, the American Council on Education submitted [public comments](#) to the U.S. Department of Education expressing concern about the recently released Dear Colleague Letter (DCL) on third-party servicing (TPS). In the letter, ACE thanked the Department for its announcement on February 28th that extended the effective date of the DCL from May 1st to September 1st. However, the organization said that, given the harmful consequences that will result from the Department's expansive new definition of a third-party servicer, the Department should rescind the current DCL and identify alternate approaches that are better targeted to the issues of concern that the Department seeks to address. It also said that rescinding the guidance will allow time for the Department to carefully craft its next steps while minimizing the legal uncertainty and compliance challenges facing institutions of higher education under the DCL, particularly with respect to relationships with study abroad programs and other international entities that

are unable to meet TPS requirements. The letter noted that last week, the Department announced plans to proceed with negotiated rulemaking this fall, and includes “[t]hird-party servicers and related issues” as one of its proposed topics. ACE noted that it is unclear why the Department is proposing such far-reaching changes to its TPS requirements through sub-regulatory guidance. “We recognize the Department’s interest in ensuring better transparency and oversight of outside entities, including online-program managers (OPMs), about which it has concerns,” the letter stated. “However, we believe the negotiated rulemaking process should allow the Department to carefully consider other approaches that better address these responsibilities while avoiding the negative consequences of the DCL...”

Bipartisan Group of Senators Introduce Student Loan Tax Elimination Act

Earlier this week, a bipartisan group of senators, led by Sen. Mike Braun (R-IN) introduced the [Student Loan Tax Elimination Act](#), which would eliminate origination fees charged on Federal Direct Loans that the authors say adds unnecessary debt to student borrowers. Representative Lloyd Smucker introduced the companion legislation in the U.S. House of Representatives. “We should do what we can to ease the burden on American students, and removing this unnecessary tax on student borrowers won’t cost a thing,” Sen. Braun said in a [press release \(senate.gov\)](#). I’m proud to lead this bipartisan bill to eliminate a tax that is not good for borrowers or taxpayers.” The senators say that origination fees historically existed to offset the costs of private-sector partners that, in the current federal student loan program, no longer originate federal student loans. Before a federal student loan is disbursed, an origination fee is calculated as a tax to the borrower, increasing the overall borrower loan cost. The origination fee is subsequently deducted from the amount actually received by the borrower. While a student borrower is given less than their guaranteed loan amount, they are still expected to pay that dollar amount back—with interest.

House and Senate Democrats Reintroduce Loan Forgiveness for Educators Act

Earlier this week, Rep. Teresa Leger Fernández (D-NM), Sen. Ben Ray Lujan (D-NM), and Rep. Jahana Hayes (D-CT) reintroduced the [Loan Forgiveness for Educators Act](#), which is aimed at expanding federal loan forgiveness for teachers. The bill, originally introduced in 2019, would remove the \$17,500 cap on loan forgiveness for teachers and expand

eligibility to all types of federal student loans, including those made under the Federal Family Education Loan Program and the Perkins Loan Program. Currently, teachers must meet certain requirements to be eligible for loan forgiveness, including working in low-income schools or in teacher shortage areas for a certain number of years. The new legislation aims to make loan forgiveness more widely available to teachers across the country. "We must make college more affordable for students and ensure that our teachers are not burdened by crushing student loan debt," said Rep. Leger Fernández in a [press release](#). "The legislation we are introducing today will expand access to student loan forgiveness for teachers and provide much-needed relief to those who work tirelessly to educate our children." The bill has received support from various education organizations, including the National Education Association and the American Federation of Teachers. For a copy of a summary of the bill, click [here](#).

Department of Education Releases Memo to State Higher Education Agencies and Institutions on End of Pandemic Authority and Its Impact on SNAP

Today, the U.S. Department of Education released a [memo](#) discussing the end of the COVID-19 public health emergency (which will sunset on May 11th), and how that will affect students who are receiving benefits under programs like the Supplemental Nutrition Assistance Program (SNAP); Temporary Assistance for Needy Families (TANF); Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); Affordable Connectivity Program (ACP); and Medicaid. In the memo, the Department says that, as the public health emergency sunsets, institutions of higher education and state higher education agencies play an important role in helping students to access basic needs supports and public benefits for which they may be eligible. The memo urges states, colleges, and universities to help students continue to meet basic needs, and provides guidance on how states and schools can achieve such effort.

U.S. Department of Education News

For today's Federal Register, click [here](#).

The following announcements were posted to Federal Student Aid's Knowledge Center:

- [\(GENERAL-23-18\) Federal Student Aid Posts Quarterly Portfolio Reports to FSA Data Center](#)
 - [\(GEN-23-05\) Eligibility of Confined or Incarcerated Individuals to Receive Pell Grants](#)
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General News

The Education Trust published a new [blog post](#) titled, “The Pell Grant Makes College More Affordable—But It’s Only a Sliver of the True Cost of Attendance.”

The Common App reported new [data](#) revealing that college applicants still are not providing SAT or ACT scores at the same rate they were before the COVID-19 pandemic.

[The Hill](#) reports that House Speaker Kevin McCarthy (R-CA) said that the House Republicans could pass legislation raising the nation’s debt limit if the President continues to refuse to negotiate.

[The Hill](#) published an op-ed from Pew Charitable Trusts saying that, with or without federal student loan relief, federal policymakers must reform the nation’s defaulted loan system.

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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National Council of Higher Education Resources

1050 Connecticut Ave NW #65793

Washington, DC 20035

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

Fax: (202) 822-2142