NCHER BRIEFING

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In Today's Edition

Colleges Request Supreme Court to Halt Class-Action Settlement in Sweet v. Cardona

Yesterday, Everglades College Inc., Lincoln Educational Services Corporation, and American National University asked the U.S. Supreme Court to stop the U.S. Department of Education from discharging the federal student loans owed by their former borrowers as part of class action settlement reached in Sweet v. Cardona over borrower defense to repayment claims that languished at the agency for years. The three schools say they are being unfairly harmed by the settlement and argue the Biden Administration lacks the authority to wipe out large amounts of student debt. The schools argue that the Department is misinterpreting its authority to cancel debt under the Higher Education Act. In the filing, the three institutions suggested that the Supreme Court should take up their case, in part, because of how the administration might respond to a loss in other federal student debt relief cases. "After an adverse decision from this Court, the Secretary could turn around and cancel the same debts under his claimed [Higher Education Act] authority," the colleges wrote in their court filing, adding that "the Court should not permit the Secretary to proceed under such unprecedented and breathtaking claims of executive authority before this Court has had a chance to address its legality." The request to the Supreme Court comes after the U.S. Court of Appeals for the Ninth Circuit declined to halt the class-action settlement. In a 3-0 decision, the court ruled that the colleges "fail to demonstrate a sufficient probability of irreparable harm to warrant a stay of the challenged settlement" while their appeals continue. For further coverage, see this article from NBC News.

2U Sues Department of Education Over Third-Party Servicer Guidance

Yesterday, 2U, an online program management firm, filed a lawsuit in the U.S. District Court for the District of Columbia against the U.S. Department of Education over new guidance it issued in February imposing new rules and requirements on third-party servicers. In the lawsuit, 2U argues that the Department has overstepped its authority by using subregulatory guidance to make substantive changes that should go through the federal negotiated rule-making process. "The Department's unprecedented claim of authority—effectuated in a mere Dear Colleague Letter—is contrary to law and arbitrary and capricious, and it ignores the procedural rulemaking requirements set forth in the [Higher Education Act] and Administrative Procedure Act," the lawsuit states. Since the release of the guidance, over 1,000 colleges and universities, companies, consumer advocacy groups, and others have submitted public comments in response to the new guidance. The Department has stated that it is particularly focused on entities that receive a share of tuition revenue in exchange for their services, which critics believe can drive up the price of higher education and draw students to low-value academic programs at subpar institutions. "2U supports greater transparency, but we believe the 2023 Dear Colleague Letter's redefinition of the statutory term 'third-party servicer' is unlawful and should be rescinded or invalidated," said 2U's Chief Legal Officer Matthew Norden. "While we regret the need to file this case, students must be protected from the disruption and uncertainty that such arbitrary rulemaking creates." For further coverage, see this article from Inside Higher Ed.

FSA Publishes FFELP SAP Rates for First Quarter-2023

Earlier this week, the U.S. Department of Education's Office of Federal Student Aid released the Federal Family Education Loan Program (FFELP) special allowance rates for the quarter ending March 31, 2023. According to the notice, the average Treasury bill rate was 4.76 percent, the average commercial paper rate was 4.86 percent, and the average LIBOR [London Interbank Overnight Rate] rate used to compute special allowance was 4.70 percent.

McKinsey Releases New Report on Higher Education Sector and American Competitiveness

Last week, McKinsey and Company published a report titled Fulfilling the Potential of US Higher Education, which argues that the higher education sector faces a crisis on multiple fronts and, in order to curb this crisis, the sector must remain focused on its core mission of educating learners but also evolve its practices to serve more Americans. The report finds that a postsecondary degree remains one of the most proven enablers of economic mobility and individual empowerment in the U.S., yet the benefits of the degree are not distributed equally throughout all groups. The company also found that enrollment rates have declined across the board due to three factors: a drop in the U.S. birth rate since the Great Recession, changing perceptions about the costs and benefits of earning a degree, and fallout from the COVID-19 pandemic. However, as enrollment rates have fallen, demand for workers with degrees has risen compounded by a talent shortage. The report also found that the skepticism about the value of postsecondary degrees has risen. In May 2021, 65 percent of college students surveyed agreed with the statement that higher education is no longer worth the cost, up from 57 percent in December 2020 and 49 percent in August 2020. The report includes five recommendations that higher education funders and institutions of higher education can take to address the barriers illustrated in the report, including the following:

- Prioritize the 52.5 million potential adult learners without college degrees through creative support structures, more-flexible class schedules, and tailored instructional modalities.
- Fill excess capacity in colleges and universities, starting with the 1.65 million open seats in top-performing institutions with high completion rates.
- Deploy student-specific, data-driven interventions to improve access and close the 45-percentage-point gap in completion rates, supporting students from enrollment to employment.
- Guide students toward high-return on investment, high-employment pathways through enrollment in the 64 percent of postsecondary programs that offer positive returns within ten years.
- Explore options to improve college affordability through cost efficiency and new financing mechanisms.

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:

- (ANN-23-01) Live Internet Webinars – Better FAFSA Better Future Webinar Series, June–July 2023
- Comment Request: Request for Title IV Reimbursement or Heightened Cash Monitoring 2
- Federal Perkins Data Provider Instructions (Version 9.0)

General News

Business Insider reports that the New Civil Liberties Alliance just joined the lawsuit challenging the U.S. Department of Education's pause on federal student loan payments.

Higher Ed Dive reports that House Republicans are pressing the U.S. Department of Education over colleges' foreign gift reporting requirements.

Inside Higher Education reports that 16 institutions of higher education have united to help rural students attend college.

The Hechinger Report writes that more than a third of community college students have vanished.

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