



Thursday, August 31, 2023

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NCHER Office Closed for Labor Day, Briefing Returns on Tuesday

The NCHER offices will be closed on Monday, September 4th, for the Labor Day holiday. The office, along with the next edition of the NCHER Briefing and NCHER Weekly

Rundown, will reopen on Tuesday, September 5, 2023. We hope that you have a great holiday weekend!

NCHER Webinar on Federal Agenda - Fall 2023

On Wednesday, September 6, 2023 at 2:00 – 3:00 pm ET, NCHER will hold a webinar to review upcoming federal developments for Fall 2023 with a focus on legislative and regulatory developments impacting the higher education finance community that took place in late summer and what we expect to take place in the fall as we head into the second half of the year. This is a member-only event, which means that you will need to be logged into the NCHER website to [register](#).

Federal Student Aid Releases New Quarterly Reports, Finds \$1.63 Trillion in Outstanding Loans

Yesterday, the U.S. Department of Education's Office of Federal Student Aid (FSA) released [new quarterly reports](#) on the federal student loan program to the FSA Data Center. The reports include key data and other information about federal student aid programs from June 30, 2023. The reports show that, as of June 2023, approximately 43.4 million unduplicated recipients had \$1.63 trillion in outstanding federal student loans. This represents an increase of nearly \$17 billion in the outstanding loan balance and almost 600,000 in the number of student loan recipients since last year. Although there have been modest increases in Direct Loan balances, the balances of Federal Family Education Loan Program (FFELP) loans have been declining more rapidly, in part due to the temporary limited waiver for Public Service Loan Forgiveness and other loan discharge programs. As a result of these shifts, FSA now directly manages 93 percent (or \$1.5 trillion) of the total federal loan portfolio. The reports include the following additional findings:

- As a result of special COVID-19 flexibilities that continue through the end of August, the reports say that the number of recipients in repayment status has fallen sharply since March 2020. More than 27 million Direct Loan recipients, with approximately \$1.1 trillion in outstanding loans, were in forbearance status as of June 2023, and more than 99 percent of these balances were in the special forbearance granted under the CARES Act. Only 300,000 Direct Loan recipients had opted out of the payment pause and, thus, were in an active repayment status as of June 30, 2023, compared to 18.1 million recipients in March 2020. Notably,

some borrowers whose accounts remain in a COVID forbearance status continued to make voluntary payments, even though they are not required to do so.

- The reports also note that, in September 2022, Income Driven Repayment (IDR) enrollment among Direct Loan borrowers 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 8.38 million Direct Loan recipients owing \$524 billion in June 2022 to 8.23 million borrowers owing \$510 billion in June 2023. These decreases are largely driven by the number of borrowers who have entered repayment during the COVID-19 pandemic without selecting a repayment plan. These borrowers have immediately been transitioned into forbearance due to the emergency. Once repayment begins next month, a considerable number of these borrowers are likely to enroll in an IDR plan.
- Finally, the reports include updated data on Direct Loan defaults finding that the number of cumulative borrowers in default continues to decrease, now 4.5 million borrowers are in default compared to about 4.8 million borrowers one year ago and the number of defaulted FFELP borrowers has also decreased slightly, now 3.3 million borrowers.

White House Sends Supplemental to Congress for Inclusion in CR, Includes Additional Funding for Student Aid Administration

Today, the White House Office of Management and Budget sent a request for supplemental funding to Congress for inclusion in the Continuing Resolution (CR) that is currently being assembled to keep the federal government in operation past the start of the federal fiscal year on October 1st. Both House Speaker Kevin McCarthy (R-CA) and Senate Majority Leader Chuck Schumer (D-NY) have embraced the plan to pass a short-term CR that keeps federal agencies funded at current levels, likely until early December, since the House and Senate have yet to clear any of the 12 individual appropriations bills that make up the discretionary portion of the federal budget. The list of “anomalies” the White House sent Congress begins the debate over what federal programs will get a funding bump beyond the current spending levels in a CR. The list includes new and additional funding across 10 federal agencies, including \$2.3 billion for student aid administration at the Office of Federal Student Aid at the U.S. Department of Education “to avoid disruption of core operations to process, award, disburse, and manage federal student aid.” The White House said that, without the anomaly, basic ongoing

activities including loan servicing operations, Free Application for Federal Student Aid application processing, common origination and disbursement activities, data center hosting, and call center operations will be impeded.

Department of Education Releases Federal Register Notice Inviting Nominations for Federal Student Loan Forgiveness Rulemaking

Today, the U.S. Department of Education published a [notice in the Federal Register](#) announcing the establishment of a negotiated rulemaking committee to develop regulations related to federal student loan forgiveness under section 432(a) of the Higher Education Act. According to the notice, the committee will examine and develop regulations pertaining to authority under Section 432(a), which relates to the modification, waiver, release, or compromise of federal student loans. The notice says that the committee will meet virtually on three separate two-day occasions:

- Session 1: October 10 and 11, 2023
- Session 2: November 6 and 7, 2023
- Session 3: December 11 and 12, 2023

Committee meetings will take place from 10:00 a.m. ET to Noon ET and 1:00 p.m. ET to 4:00 p.m. ET each day it convenes, with the last half hour of the day reserved for a public comment period.

The Department also invited nominations for both primary and alternative negotiators to serve on the committee from 14 different key constituencies. The notice says that the committee will have seats for four different types of student loan borrowers (student loan borrowers who attended programs of two years or less, attended four-year programs, and attended graduate programs, and currently enrolled in postsecondary education) and four different types of institutions of higher education (public institutions, private nonprofit institutions, proprietary institutions, and Historically Black Colleges and Universities). It will also be comprised of:

- Legal assistance organizations that represent students or borrowers;
- U.S. military service members, veterans, or organizations representing them;
- Civil rights organizations;

- State higher education officials or regulators;
- State attorneys general; and
- Lenders, servicers, or guaranty agencies under the Federal Family Education Loan Program.

The Department will accept nominations for negotiators until September 14, 2023.

Federal Court Issues Decision Reinstating Ban on Collection Costs for Defaulted Federal Student Loans

Earlier this week, the U.S. Court of Appeals for the District of Columbia [issued](#) a decision in *Ascendium Education Solutions, Inc. vs. Miguel Cardona*. The court ruled that Ascendium has standing to challenge the entirety of the final rule issued by the U.S. Department of Education prohibiting guaranty agencies from assessing any collection costs against borrowers who take steps to end their default status within 60 days, by agreeing to repay or to rehabilitate their loans; that the rule is consistent with the provisions of the Higher Education Act and is lawful; and that the rule is not arbitrary or capricious. Ascendium argued that the final regulation violated the Administrative Procedures Act and exceeded the Department's statutory authority, which unconditionally authorizes collection fees when a borrower defaults. The Court disagreed with those arguments, ruling that the Higher Education Act mandates borrowers who default on their loans shall be required to pay "reasonable" collection costs but the law does not define the term. As such, the court determined that Congress granted the Department "the authority to fill that gap, so long as the Department's interpretation itself is reasonable" under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*

Department of Education Announces Approval of \$72 million in Borrower Defense Discharges for Former Ashford University Students

On Wednesday, the U.S. Department of Education [announced](#) the approval of \$72 million in borrower defense to repayment discharges for more than 2,300 students who applied for relief from loans they took out to attend Ashford University, which was an online for-profit school based in San Diego. The approvals resulted from a review conducted by the Department of evidence presented by the California Department of Justice during a successful lawsuit brought against the university chain and its parent company, Zovio, Inc., which resulted in a judgment against both entities in March 2022. Based upon

evidence presented in that lawsuit, the Department concluded that Ashford and Zovio made numerous substantial misrepresentations between March 1, 2009, through April 30, 2020 that borrowers relied upon to their detriment. The approved claims are from borrowers who enrolled in Ashford during this period and filed applications for borrower defense with allegations corroborated by these findings. In a press release, Under Secretary of Education James Kvaal stated “as the California Department of Justice proved in court, Ashford relied extensively on high-pressure and deceptive recruiting tactics to lure students...Today we are protecting the students who were cheated by Ashford, and we will also hold the perpetrators accountable, protect taxpayers, and deter future wrongdoing.” The Department indicated that it will continue to review evidence to see if Ashford’s management and leadership took actions that violated federal laws or regulations and threatened the integrity of the federal student financial aid programs. If the evidence shows they did, the Department said that it may pursue appropriate actions to enforce those rules. Of note, while the lawsuit was still underway, in 2020, Ashford University was sold through a deal that affiliated it with the University of Arizona and rebranded the online college as the University of Arizona Global Campus, or UAGC. In June of this year, the University of Arizona directly acquired UAGC. In its announcement this week, the Department suggested that the University of Arizona could end up being asked for at least some of the amount forgiven in federal student loans.

For additional coverage, see this article from [CNN](#).

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:

- [\(APP-23-11\) Draft 2024–25 FAFSA Specifications Guide \(September 2023 Update\) Now Available](#)
- [Comment Request: Teacher Education Assistance for College and Higher Education Grant Program Obligation to Repay Grant Regulations](#)
- [\(CB-23-16\) Reminder – FISAP Due Sept. 29, 2023](#)

General News

[Higher Ed Dive](#) reports on how the delay in the Free Application for Federal Student Aid could impact colleges and students, saying that the December release could affect institutional staffing, financial aid deadlines, and what colleges students attend.

[Newsweek](#) examines what happens if borrowers do not repay their federal student loans once interest begins to accrue tomorrow.

[Forbes](#) reports that the Internal Revenue Service recently issued a reminder to companies about a tax-free way to help their employees pay back their student loans.

The U.S. The Government Accountability Office released a [blog post](#) discussing what borrowers should know about Income-Driven Repayment plans and the office's work on recent changes to the options for student and parent borrowers.

[The Hill](#) reports that federal student loan payments are due soon and what borrowers should expect.

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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