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In Today's Edition

- NCHER Fall Legal Meeting: Less Than a Month Away, Register Today!
- House Republicans Nominate Majority Leader Scalise for Speaker, Unclear on Timing of Floor Consideration
- Department of Education Completes First Negotiated Rulemaking Session on Federal Student Loan Forgiveness, Senate Republicans Criticize Effort Made Up of “Blatantly Biased Panel of Negotiators”
- Cato Institute, MacKinac Center Appeal Ruling on Department of Education’s Income Driven Repayment Adjustment
- House Education and the Workforce Committee Republicans Introduce Bill to Curb Foreign Influence in Higher Education, First in Series of Bills to Reauthorize the Higher Education Act
- U.S. Department of Education News
- Member News
- General News

NCHER Fall Legal Meeting: Less Than a Month Away, Register Today!

NCHER will hold its Fall Legal Meeting on Tuesday, November 7, 2023 at the law offices of McGlinchey Stafford in New Orleans (Pan American Life Center, 601 Poydras St, # 1200). 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 [meeting website](#).

The [Preliminary Agenda](#) includes many important topics of interest to the membership. This includes sessions such as a Washington Update, which will include a regulatory update, an update on current initiatives of the Consumer Financial Protection Bureau (CFPB), risks and rewards of artificial intelligence in consumer finance, best practices in incident response to data breaches, an update on the current term of the U.S. Supreme Court with a focus on *Community Financial Services Association of America v. CFPB* and *Loper Bright Enterprises v. Raimondo*, legal, policy, and operational issues with the resumption of repayment and collections, and the impact of the *Students for Fair Admissions v. Harvard* decision on grant programs. While NCHER is making arrangements for a virtual 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. Similar to the past, meeting 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.

NCHER would like to thank Kelly Lipinski and our friends at McGlinchey Stafford for hosting the meeting. If you have any initial questions on the meeting, please reach out to Shelly Repp at srepp@ncher.org.

We hope to see you in New Orleans!

House Republicans Nominate Majority Leader Scalise for Speaker, Unclear on Timing of Floor Consideration

Yesterday, House Republicans conducted a secret ballot vote to nominate a candidate for Speaker of the U.S. House of Representatives. On the first ballot, House Majority Leader Steve Scalise (R-LA) defeated House Judiciary Committee Chairman Jim Jordan (R-OH) by a vote of 113-99, winning a simple majority of the conference members. Now, Rep. Scalise will have to win 217 votes on the House Floor in order to become speaker.

Last night, Speaker-designate Scalise sent out surrogates to meet with Republican members who supported Chairman Jordan to try to garner their votes and he met with other holdouts to try and sway their votes or try to understand their opposition in hopes of flipping them. Rep. Tom Massie (R-KY) estimates that there are approximately 20 Republicans who could vote for another candidate on the floor, more than enough

members to send the vote to a second ballot. At this time, it is unclear when the House will formally vote to elect a Speaker. For additional coverage, see the following articles:

[Scalise struggling to secure GOP floor votes for Speakership - The Hill](#)

[Speaker vote timing uncertain as Jordan backers hold out - Roll Call](#)

Department of Education Completes First Negotiated Rulemaking Session on Federal Student Loan Forgiveness, Senate Republicans Criticize Effort Made Up of “Blatantly Biased Panel of Negotiators”

Yesterday, the U.S. Department of Education completed the first of three sessions of its Student Loan Relief Committee, which has been tasked with revising federal regulations to provide loan forgiveness under the waiver authority of the Higher Education Act. Deputy Under Secretary Ben Miller opened the meeting with an explanation of the waiver authority under current law and how the Department is trying to frame the discussions based on the five questions included in the issue paper.

During the proceedings, the Department and committee members discussed whether a proposed rule would include one-time forgiveness to assist student and parent borrowers, whether to provide full or partial cancellation for borrowers in each of the five categories, and whether the agency should create new regulations and new authorities or propose changes to existing rules. They also discussed how to structure forgiveness for borrowers who borrowed or entered repayment before the creation of current benefits since those benefits were not available when those borrowers took out their loans, and whether there was a starting point for borrowers such as July 1, 2010 since that is when originations into the Federal Family Education Loan Program (FFELP) ended. The committee members also discussed several questions posed by the Department on what borrowers the agency should be seeking to help.

The committee discussed the second question regarding borrowers who have been in repayment for an extended period of time in greater detail with some members in support of providing relief to borrowers who have been in repayment for more than 13 years and older borrowers. They also discussed the third question regarding relief for borrowers who attended programs that did not offer sufficient value in greater detail and

whether to give relief to borrowers who attend programs that fail the new gainful employment rule or a similar metric.

Next, the committee members discussed the fifth question pertaining to borrowers experiencing hardship in greater detail with representatives making the case that borrowers who are incarcerated should receive relief as well as borrowers who are struggling with child care costs, aging parents, and those with high medical costs. Committee members also discussed whether there should be a determining factor, such as family net worth, when providing relief and whether borrowers who made a major financial choice when they were told that they would qualify for the original broad-based forgiveness should be considered as facing hardship. The Department noted that the goal of the first session was to listen and collect ideas, with the intent that the agency will bring back more concrete ideas in the second session. Following comments that it was important that any proposals created through the regulatory process can withstand legal scrutiny, the Department, consumer advocates, and state Attorneys Generals called a caucus with FFELP representatives and stated their desire to make sure that as many borrowers are able to take advantage of the provisions. Based on the discussions, the Department will provide proposed draft regulatory language for the committee to review at the next session slated for November 6-7, 2023. For further coverage, see this article from [Inside Higher Ed](#).

Separately, Senate Republicans sent a [letter](#) to Education Secretary Miguel Cardona calling the week's proceedings a partisan policymaking charade and urging him to work with Congress to pursue legal legislative solutions to reform the federal student loan program. "Your blatant attempt to subvert the Constitution via a regulatory process not only makes a mockery of negotiated rulemaking under the Higher Education Act, but also of the separation of powers," the letter led by Sen. Charles Grassley (R-IA) says. "Article I Section I of the Constitution states, 'All legislative powers herein granted shall be vested in a Congress of the United States.' Congress has not passed any legislation giving the Secretary, or anyone in the Executive branch, the authority for mass cancellation of student loans. The lack of authority is further evident by the fact that there is no precedent for providing mass student loan discharges under the current administration through section 432(a) to groups of student borrowers without a link to an otherwise outlined statutory discharge authority. Any time Congress has intended to provide the Department with group discharge authority, it has expressly done so." The senators also criticize the regulatory effort for including a blatantly biased panel of negotiators and rejecting several groups representing taxpayers.

Cato Institute, MacKinac Center Appeal Ruling on Department of Education's Income Driven Repayment Adjustment

On Tuesday, the Cato Institute and the Mackinac Center for Public Policy [appealed](#) a recent ruling by the U.S. District Court for the Eastern District of Michigan that dismissed their lawsuit against the U.S. Department of Education's decision to forgive the federal student loans of over 804,000 borrowers using an adjustment to Income-Driven Repayment (IDR). Back in July, the Department announced that it would discharge \$39 billion in federal loans as a result of the fixes to the way the agency counted payments towards IDR plans. At the time, the Department said that some loan servicers had failed to properly track IDR plan payments and so borrowers who made enough qualifying payments had not seen forgiveness.

In August, a federal judge dismissed the groups' initial legal challenge to the IDR adjustment citing that both Cato and Mackinac lacked standing to sue. In the appeal to the U.S. Court of Appeals for the Sixth Circuit, the plaintiffs maintain that the agency's IDR adjustment plan is unlawful. "The Administration aims to cancel student loan debt — no matter how unlawful its actions — on the apparent theory that courts cannot move fast enough to stop it or else will decide no one has standing to oppose its will," Mark Chenoweth, President and General Counsel for the New Civil Liberties Alliance, the law firm representing Cato and Mackinac, said in a [statement](#). Following the appeal, the Department dismissed the new suit and said that it has already processed discharges for over 800,000 borrowers with IDR plans who were eligible for forgiveness. For further coverage, see this article from [Higher Ed Dive](#).

House Education and the Workforce Committee Republicans Introduce Bill to Curb Foreign Influence in Higher Education, First in Series of Bills to Reauthorize the Higher Education Act

On Wednesday, House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) and Rep. Michelle Steel (R-CA) introduced the [Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions \(DETERRENT\) Act](#), which aims to bring increased transparency, accountability, and clarity

to foreign gift reporting requirements for colleges and universities. According to a summary, the bill provides stricter foreign gifts reporting requirements for institutions of higher education. Under Section 117 of the Higher Education Act, colleges and universities are required to disclose any gifts or contracts received by a foreign source that are valued at \$250,000 or more within a calendar year. This new bill would lower that threshold from \$250,000 to \$50,000 and, for foreign countries or entities of concern, the threshold would be lowered to \$0.

The legislation also prohibits colleges and universities from entering into contracts with those foreign countries or entities of concern unless they get a waiver from the U.S. Department of Education. “Postsecondary education in America has been compromised. Malignant foreign entities, like the Chinese Communist Party, have taken root at colleges and universities by simply flashing their checkbooks and opening the floodgates to an endless stream of cash – every dollar comes with strings attached,” the lawmakers said in a [press release](#). The release mentioned that the DETERRENT Act is the first piece of legislation in a series of bills that will be introduced by House Republicans over the next few weeks to reform the Higher Education Act.

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:

- [\(LOANS-23-11\) HEAL Program Information – Maximum HEAL Program Interest Rates for Quarter Ending Dec. 31, 2023](#)

Member News



Edfinancial Services: Position Opening for Chief Compliance Officer (CCO)

The CCO is responsible for the administration of Edfinancial's compliance management program which includes the primary components of written policies and procedures, training, monitoring and corrective action, the goal of which is compliance with all applicable federal and state laws and regulation. The CCO reports directly to the Chief Executive Officer. Collaboration with other company departments is necessary to direct compliance issues to appropriate channels for investigation and resolution and will work with General Counsel as needed to resolve difficult legal compliance issues. The CCO communicates directly with the U.S. Department of Education and leads various projects for the Company.

Various other responsibilities of the CCO and the compliance department include, but are not limited to:

- Act as an independent review and evaluation body to ensure that compliance issues/concerns within the organization are being appropriately evaluated,

- Access records relevant to compliance and monitoring activities and report findings.
- Conduct surveys, inspections, audits, and investigation periodically to assess staff readiness and to identify where corrections are needed.
- Re-evaluate areas of previous deficiency to identify improvements.
- Present evaluations and reports to the CEO monthly and to Senior Management at least annually but typically quarterly.
- Investigate complaints and coordinate action plans with other departments.
- Utilize knowledge of the company's purpose and applicable statutes, rules and regulations, procedures, and practices, to respond to other departments and external requests for assistance or information.
- Track all developments in connection with new laws and regulations issued by federal and state governments, particularly those directly related to student loan servicers.

Edfinancial is looking to hire a new CCO to start as soon as possible. Interested parties should send their resume to Wanda Hall, CCO, via email at whall@edfinancial.com.

investigated, and resolved.

- Coordinate external and internal quality assurance, compliance and audit reviews, and monitoring activities.

General News

[The Chronicle of Higher Education](#) publishes results from a new national survey, which reveals what the public really thinks about higher education.

[Forbes](#) reports that, as the U.S. Department of Education continues to roll out federal student loan forgiveness programs, borrowers are continuing to experience implementation problems due to an “underfunded, understaffed, and poorly managed student loan servicing system.”

[Inside Higher Education](#) releases an opinion piece about the current system of financing higher education and proposes a new, more equitable system of college financing.

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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