



DAILY BRIEFING

Monday, August 9, 2021

The *NCHER Daily Briefing* will publish on an abbreviated schedule consisting of today and Thursday while most of Congress is in recess for the month of August.

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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](#).

Department of Education Issues “Final” Extension of Student Loan Payment and Collections Moratorium

On Friday, the U.S. Department of Education [announced](#) that it will issue a “final” extension of the moratorium on federally-held student loan repayment, interest, and collections through January 31, 2022. The current pause was set to expire at the end of September. "The payment pause has been a lifeline that allowed millions of Americans to focus on their families, health, and finances instead of student loans during the national emergency," said U.S. Secretary of Education Miguel Cardona. "As our nation’s economy continues to recover from a deep hole, this final extension will give students and borrowers the time they need to plan for restart and ensure a smooth pathway back to repayment. It is the Department’s priority to support students and borrowers during this transition and ensure they have the resources they need to access affordable, high quality higher education."

The Department’s release on this issue stated that this extension will allow borrowers to plan for the resumption of payments and reduce the risk of delinquency and defaults after restart, and that the agency will continue its work to transition borrowers smoothly back into repayment, including by improving student loan servicing.

For additional coverage, including reports that student loan cancellation is the next focus for House and Senate Democrats after the Biden Administration extended the student loan repayment pause, see these articles from [Forbes](#) and [Business Insider](#).

Department of Education Issues New Interpretation on State Preemption of Student Loan Servicing

Today, the U.S. Department of Education released a [new interpretation](#) that revises its position on the legality of state laws and regulations on the servicing of federal student loans. The interpretation revokes and supersedes the prior notice of interpretation

published in the *Federal Register* on March 12, 2018. The new interpretation will take effect upon its publication in the *Federal Register*, which is expected later this week. According to the Department's press release, this new action will help states enforce borrower bills of rights and similar laws.

By way of background, the prior interpretation opined that state regulation of the servicing of loans under the William D. Ford Federal Direct Loan Program "impedes uniquely federal interests," and also opined that state regulation of the servicing of loans under the Federal Family Education Loan Program (FFELP) "is preempted to the extent that it undermines uniform administration of the program." The new interpretation reviews general preemption principles, noting that education and consumer protection are areas long regarded as subject to state powers. It concludes that, except in limited and specific instances set forth in the Higher Education Act, state oversight of federal student loan servicers is not expressly preempted. The new interpretation also identifies affirmative misrepresentations as one area of state law that is not preempted, and goes on to say that states may consider and adopt additional measures which protect borrowers and do not conflict with federal law. These measures can be enforced by the states and the Department can and will work with state officials to root out all forms of fraud, falsehood, and improper conduct that may occur in the federal student aid programs. The new interpretation applies to the servicing of both Direct and FFELP Loans.

The Department says that the 2018 interpretation strove to justify how the Department could perform oversight task adequately on its own, but a different approach may be more likely to succeed. This involves a coordinated partnership of interested federal and state officials that could produce a more robust system of supervision and enforcement to monitor and improve performance under this far-flung system.

Department of Education Announces Negotiated Rulemaking Topics and Calls for Nominations

Last week, the U.S. Department of Education [announced](#) that it would establish a negotiated rulemaking committee to review nine topics around student loan policy that were the subject of recent public hearings. The topics include the following:

- Borrower defense to repayment
- Closed school discharges
- False certification discharges

- Income-contingent repayment
- Interest capitalization on federal student loans
- Mandatory pre-dispute arbitration and prohibition of class action lawsuits
- Pell Grant eligibility for prison education programs (in a subcommittee)
- Public Service Loan Forgiveness
- Total and permanent disability discharges

The notice also called for nominations for primary and alternate negotiators to represent the following constituent groups:

- Dependent students
- Independent students
- Student loan borrowers
- Legal assistance organizations that represent students and/or borrowers
- S. military service members, veterans, or groups representing them
- State attorneys general
- State higher education executive officers, state authorizing agencies, and/or state regulators of institutions of higher education and/or loan servicers
- Individuals with disabilities or groups representing them
- Financial aid administrators at postsecondary institutions
- Two-year public institutions of higher education
- Four-year public institutions of higher education
- Private nonprofit institutions of higher education
- Proprietary institutions
- Minority-serving institutions of higher education
- Federal Family Education Loan (FFEL) lenders and/or guaranty agencies
- Accrediting agencies

In addition to the negotiators, the Department announced that it is seeking two advisors to the committee – the first advisor representing employers whose employees are eligible for Public Service Loan Forgiveness and a second advisor with expertise in research and analysis of higher education data. The Department says that these advisors will be non-voting roles designed to provide technical assistance and expertise during the process.

The Department also announced the formation of subcommittee that will focus on Pell Grant eligibility for prison education programs. Membership of the subcommittee will include those from the following constituent groups: consumer advocacy organizations; financial aid administrators; formerly incarcerated individuals who participated in a prison education program; groups that represents incarcerated students; postsecondary institutions that are prison education program providers; state correctional education directors; and state higher education executive officers.

The Department said that it is seeking nominations for the committee, subcommittee, or advisor spots within the next three weeks. The first negotiating session will run October 4 through 8, 2021 with subsequent meetings to be held on November 1-5, 2021, and December 6-10, 2021. The subcommittee will meet in between the full committee meetings. All sessions will be virtual and open to the public.

Senate Budget Committee Democrats Release Text of Budget Resolution With Reconciliation Instructions

Today, Senate Budget Committee Chairman Bernie Sanders (I-VT) released the legislative text of the Fiscal Year (FY) 2022 Budget Resolution, which the U.S. Senate is expected to consider later this week. The budget resolution is a budget blueprint that lays out tax and spending priorities over the coming year. It contains reconciliation instructions to 13 House and 12 Senate Committees that would permit Congress to move legislation that includes elements of the Biden Administration's [American Families Plan](#) and [American Jobs Plan](#).

Under the resolution, the budget reconciliation instructions would provide \$3.5 trillion in new federal funding across multiple policy areas that would allow the House and Senate to create a new free community college program, to provide more funding for Pell Grants, and provide funding to states and institutions of higher education for new student success grants. The Senate Health, Education, Labor, and Pensions Committee has instructions to produce legislation that spends \$726.38 billion over the next 10 years and the House Education and Labor Committee has instructions to produce legislation that spends \$779.5 billion over that same period. The resolution instructs all committees to report legislation complying with their instructions to their respective House and Senate budget committees by September 15, 2021.

In advance of release of the budget resolution, the Senate Democratic leadership put out a [memorandum](#) that is intended to provide more background information on the Budget Resolution. While the memorandum lays out issues that each committee receiving

reconciliation instructions could address, it is important to remember that a budget resolution does not stipulate which legislative matters the committees must address to comply with their reconciliation instructions. The individual committees will develop the content of their budget reconciliation submission.

Federal Reserve Releases Consumer Credit Report, Student Loans Are the Exception to Robust Increases

On Friday, the Federal Reserve released its Consumer Credit – G.19 Report, which found consumer credit increased at a seasonally adjusted annual rate of 8.8 percent for June 2021. Total outstanding consumer credit stood at \$4.319 trillion at the end of June, up \$37.6 billion from the previous month. According to the report, in June, revolving credit increased by \$17.6 billion (a robust annual rate of increase of 10.7 percent), while nonrevolving credit increased by \$19.8 billion (an annual rate of increase of 8.3 percent). Revolving credit consists mostly of credit card debt and nonrevolving debt consists mostly of auto loans and student loans. The report revealed that, in June, nonrevolving debt owned by the federal government (mostly Direct Loans) increased just slightly (by \$1.2 billion) to \$1.414 trillion. Thus, the increase in consumer credit in the month was almost entirely attributable to borrowing outside of the student loan sector. At the end of the second quarter, total student loan balances stood at \$1.732 trillion, the same as the end of the first quarter.

U.S. Department of Education News

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

The following announcement was posted to the Information for Financial Aid Professionals website:

- [Intent to Establish Negotiated Rulemaking Committee \(EA ID: OPE-21-08\)](#)

Member News



The Kentucky Higher Education Assistance Agency released its

[Financial Aid Tip for Students - August 2021](#), which says that veterans and members of the U.S. Armed Forces and National Guard may be able to take advantage of numerous student aid programs to help pay for college or technical training.



Independent Student Loan Consulting

PGPresents, LLC recently [celebrated](#) 14 years of helping student and parent borrowers manage their student loans.

General News

[Inside Higher Ed](#) examines where students will apply for postsecondary education in the fall - some are removing colleges that are in states with poor records on reducing the spread of the COVID-19 pandemic regardless of the qualities of the institution of higher education while others are not considering location as a factor.

[Inside Higher Ed](#) reports that, as the Delta variant spreads across the country, faculty and students are re-upping their advocacy for campus vaccine requirements.

[The Wall Street Journal](#) reports that colleges and universities were supposed to close the wealth gap for Black Americans. But the opposite happened. Black college graduates in their 30s have lost ground over three decades, the result of student debt and sluggish income growth.

[The New York Post](#) reports on why student loan debt is trapping more Americans than ever.

[CNBC](#) reports that student loan forgiveness scams are on the rise and how to avoid falling victim.

[Higher Ed Dive](#) includes an op-ed from Aspen Institute College Excellence Program Senior Program Manager Gelsey Mehl who argues that President Joe Biden's free community college plan will not succeed without robust transfer strategies.

[The Hill](#) includes an op-ed from contributor Robert Hildreth who argues that American employers should help pay the student loan deb for their employees.

[Truthout](#) reports that a memo uncovered by *The Intercept* shows that House Speaker Nancy Pelosi (D-CA) opposed a push by President Joe Biden to cancel student loan debt after billionaire donors, with whom she has close ties, urged her to do so.

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