NCHER

DAILY BRIEFING

Monday, October 4, 2021

In Today's Edition

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.

Supreme Court Declines to Hear Challenge to Bankruptcy Discharge Limits

Today, the U.S. Supreme Court denied a Petition for Writ of Certiorari filed by a debtor in a bankruptcy case involving a student loan guaranteed by the Pennsylvania Higher Education Assistance Agency (PHEAA). The debtor, Lorna Channer, appealed a December 2020 decision by the U.S. Court of Appeals for the Second Circuit denying the request to reopen her bankruptcy case. The petition claimed that Supreme Court review was needed because of massive confusion regarding the scope of the applicability of the Bankruptcy Code's directive that student loans only be discharged in cases where the debtor can prove "undue hardship." The Petition also claimed that a "lack of guidance has led to disparate and unpredictable holdings in the bankruptcy courts, which conflicts with the Constitution's mandate that bankruptcy laws be applied uniformly." The Petition also argued that PHEAA was not a governmental unit and thus did not qualify under the arm of the Bankruptcy Code that protects loans "made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution." The Supreme Court's dismissal of the Petition was made without comment.

While the Petition did not address the section of the Bankruptcy Code that limits the dischargeability of any "qualified education loan," the subject of past legal cases, the Supreme Court's action may add to the growing push in Congress to act on bankruptcy reform. As previously reported, under S. 2598, the Fresh Start Through Bankruptcy Act introduced by Sens. Dick Durbin (D-IL) and John Cornyn (R-TX), loans made, insured, or guaranteed by a governmental unit, or under a program funded in whole or in part by a governmental unit or nonprofit institution, including the federal government, would be dischargeable 10 years after the first payment became due. The bill is currently pending before the Senate Judiciary Committee and both Sens. Durbin and Cornyn have said that the bill could see movement sometime later this year.

Department of Education Begins Negotiated Rulemaking Sessions on Loan Issues

Today, the U.S. Department of Education held the first in a series of negotiated rulemaking sessions of its Affordability and Student Loans Committee, which has been formed to review and revise federal regulations around total and permanent disability (TPD), closed school discharge, interest capitalization, the Public Service Loan Forgiveness Program, the borrower defense to repayment process, Pell Grants for Prison Education programs, and income-driven repayment. The committee includes representatives of organizations with interests that are significantly affected by the subject matter, including Federal Family Education Loan Program lenders and guaranty agencies. For a complete list of the members, click here.

During today's session, the Department and committee members discussed those protocols that would be in place during the virtual sessions. The committee also considered, but ultimately did not reach consensus, on a request to add a consumer advocate, a borrower from a for-profit institution, and a borrower from a closed school. The committee also discussed a request to expand the list of topics to include developing federal regulations governing the path out of default, eliminating acceleration clauses, and limiting involuntary collections; the Department said that the current agenda was already full and the proposed issues could fit within the existing agenda if possible. The committee then began consideration of proposed changes to the TPD process where the Department is proposing to eliminate the three-year income monitoring period; most borrowers fail to qualify under this period because of paperwork hurdles. After the discussion, the committee began consideration of the proposed changes to closed school discharges, which include restating automatic discharges and setting the eligibility window to 180 days.

The next committee meeting will take place tomorrow from 10:00 a.m. – 12:00 p.m. and 1:00 p.m. – 4:00 p.m. with a public comment period from approximately 3:30 p.m. – 4:00 p.m. Those who are interested in attending the sessions are required to register separately for each day. To register as a participant, please click the following links:

- Register for October 5 **Link to Register**
- Register for October 6 **Link to Register**
- Register for October 7 **Link to Register**
- Register for October 8 **Link to Register**

House Appropriations Committee Chair DeLauro Writes Letter to Education Secretary Cardona Urging Stronger Borrower Defense Rulemaking Proposal

House Appropriations Committee Chairwoman Rosa DeLauro (D-CT) recently sent a letter to Education Secretary Miguel Cardona urging the U.S. Department of Education to make changes to its proposed revisions to the borrower defense to repayment process when the Accountability and Student Loans Committee meets this week. Last week, the Department released draft proposals to revise the borrower defense to repayment rule. Chairwoman DeLauro expressed concerns that the proposed process for recouping funds from colleges and universities fails to establish a strong deterrent effect to protect student borrowers. “I appreciate that the Department recognizes how the recoupment process from institutions should serve as a strong deterrent to predatory for-profit colleges,” Chairman DeLauro wrote in her letter. “Unfortunately, much of the language in Issue Paper #8 could render the recovery process toothless and fail to establish a strong deterrent effect that protects student borrowers. Predatory for-profit colleges should be on notice that there will be straightforward, substantial financial consequences for any unscrupulous behavior that leads to a successful borrower defense claim.”

FSA Alerts Aid Administrators to Look Out for Potential Inaccurate AGIs on FAFSAs

Last week, the U.S. Department of Education Office of Federal Student Aid released an **electronic announcement** stating that Free Application for Federal Student Aid (FAFSA) filers who use the Internal Revenue Service (IRS) Non-Filer Portal, then subsequently file a 2020 tax return, then use the IRS Data Retrieval Tool to transfer their tax information into the 2022–23 FAFSA will incorrectly and unknowingly report an Adjusted Gross Income (AGI) of $1. This error could result in a lower Expected Family Contribution and a higher Pell Grant award for students who would not otherwise be eligible. The notice recommends that financial aid administrators identify all instances of $1 AGIs for filers in 2022–23 FAFSA cycle, and follow-up with applicants to resolve the issue as needed. The new tool causing these errors was launched after the filing season and has several warnings on the landing page to educate taxpayers prior to using it.

Brookings Report Examines Student Outcomes at Community Colleges

Last week, the Brookings Institution released a report entitled, **Student Outcomes at Community Colleges: What Factors Explain Variation in Loan Repayment and Earnings?** The report considers whether accountability measures should be imposed on community colleges given the variations in student outcomes by examining program-level earnings and student-loan repayment outcome data at more than 1,200 community colleges across the country. Key findings include the following:

- Net earnings by students vary substantially by field of study.
- On average, programs that enroll more underrepresented minority students tend to have worse outcomes, but much of the disparity can be explained by chosen fields of study and the variation in earnings across programs. In other words, demographics are not destiny for students attending community colleges.

- Colleges that enroll more underrepresented minority students tend to offer fewer programs in fields that lead to the highest post-college earnings.
- The mix of programs at a college and tuition levels explain a significant share of the variation in post-college earnings and loan repayment.

The report says that accountability in higher education could improve if certain schools or programs with poor student outcomes were excluded from the federal student aid programs. The findings suggest community colleges can improve student success, and the report offers several ways that state higher education leaders can boost performance.

Sens. Hagerty, Cramer Introduce CFPB Accountability Act

Last week, Sens. Bill Hagerty (R-TN) and Kevin Cramer (R-ND) introduced **S. 2790, the Consumer Financial Protection Bureau (CFPB) Accountability Act**, which aims to increase oversight of the CFPB by subjecting the Bureau to the annual appropriations process. Currently, the Federal Reserve provides funding for CFPB operations. "The Consumer Financial Protection Bureau is a single-director agency that is less accountable to Congress because it is not subject to the regular appropriations process like other federal agencies," said Sen. Cramer. "Our legislation would allow for increased congressional oversight of this aggressive agency and ensure the people's elected representatives have more say over the decisions coming out of Washington."

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:

- **(APP-21-20) The 2022–23 FAFSA® Form is Here!**

General News

Inside Higher Ed reports on the efforts to reform the closed school discharge process based on the recent report from the U.S. Government Accountability Office and following last week's hearing before the House Education and Labor Committee.

Forbes publishes a column reporting that major student loan forgiveness changes may come this week.

University Business reports on the free community college program that is currently included in the Build Back Better Act. The article says that the investment in two-year institutions is critical to provide both a safety net and career path opportunities for students.

Diverse Issues in Higher Education reports on the Biden Administration's proposed higher education policies.

Fortune reports on who is next in line for student loan forgiveness as experts weigh in.

Fox Business reports the Biden Administration has canceled $1.5 billion in federal student loans under the borrower defense to repayment process and lets student and parent borrowers know how to apply.

CBS News (60 Minutes) reports that the Public Service Loan Forgiveness program was meant to erase student loan debt for borrowers who spent a decade as public servants. But the program has come up woefully short for members of the military.

Houston Business Journal reports that, with skyrocketing college tuition and other educational obstacles, many companies are no longer looking for just degree-holding candidates. Instead, work experience has become king.

Business Insider reports that 3.6 million parents use the most expensive federal student loan to pay for their kids' college, and explores how it can push off retirement.

Bankrate reports on the most valuable college and university majors in 2021.

Diverse Issues in Higher Education reports on how higher education is revamping its mental health and wellness policies.

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