NCHER

DAILY BRIEFING

Tuesday, October 5, 2021

In Today's Edition

NCHER Fall Legal Meeting: Two Weeks to Register, Final Agenda Has Been Released!

NCHER will hold its annual Fall Legal Meeting on Thursday, October 21st, at the offices of Bradley Arant Boult Cummings located at Roundabout Plaza, 1600 Division Street, Ste 700, Nashville, Tennessee. The agenda for the meeting will cover a number of topical

subjects, including an update on the Consumer Financial Protection Bureau, developments involving the Fair Debt Collection Practices Act, an overview of state lending and servicing laws (including preemption), legal issues involved with the U.S. Department of Education's regulation of guaranty agencies, privacy and cybersecurity, and the current market for financing Federal Family Education Loan Program and private education loans. The program should be of interest to both lawyers and non-lawyers. Information on the meeting, including a link to register and a list of hotels close to the law firm, can be found under the Events tab on the **NCHER website**. A virtual option will be provided, though active participation for remote registrants will be limited. Those planning on attending remotely should indicate so when registering.
If you have any questions regarding the Legal Meeting, feel free to reach out to Shelly Repp at **srepp@ncher.org**.

Department of Education Releases Memo on Quarterly Special Allowance Rates

Today, the U.S. Department of Education's Office of Federal Student Aid released a **memorandum** announcing the calculation of quarterly special allowance rates for the Federal Family Education Loan Program for the quarter ending September 30, 2021. The memo includes the following information:

COMMERCIAL PAPER RATE The Commercial Paper rate is "the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period." For the quarter ending September 30, 2021, the average rate used to compute special allowance is 0.10 percent.

LIBOR RATE The LIBOR rate is "the average of the bond equivalent rates of the quotes of the 1-month London InterBank Offered Rate (LIBOR) in effect for each of the days in such quarter as compiled and released by the British Bankers Association." For the quarter ending Sep. 30, 2021, the average rate used to compute special allowance is 0.09 percent.

TREASURY BILL RATE The Treasury Bill rate is "the average of the bond equivalent rates of the 13-week Treasury bills as published by the Department of the Treasury." For the quarter ending Sep. 30, 2021, the average of the rates is 0.05 percent.

Department of Education Continues Negotiated Rulemaking Sessions on Loan Issues, Completes Discussion on Interest Capitalization

Today, the U.S. Department of Education began the second of five meetings scheduled for this week 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. At the beginning of today's session, the committee discussed and considered a request to add a for-profit student loan borrower as an advisor as opposed to a member of the committee. Similar to yesterday's actions, institution representatives opposed the request. The committee then continued its discussion of proposed changes to closed-school discharge, which include reinstating automatic discharges and standardizing the window of eligibility from 120 days to 180 days regardless of the loan disbursement date. Following that discussion, the committee began consideration of the proposed changes to scrap non-statutory interest capitalization on federal student loans; there was largely no opposition to the proposed changes, though a question was raised as to whether the policy could be applied retroactively or early adoption. Department officials indicated that the action is intended to be prospective. Finally, the committee began discussing proposed changes to the borrower defense to repayment process, where the Department is recommending a return to the preponderance of the evidence for borrowers who are making claims.
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 6 **Link to Register**
- Register for October 7 **Link to Register**
- Register for October 8 **Link to Register**

Department of Education Hires Firm to Review Public Service Loan Forgiveness Program, House Republicans Criticize Rumored Rewrite

The U.S. Department of Education recently hired Grant Thornton, an accounting firm, to conduct an "operational review" of the Public Service Loan Forgiveness program (PSLF). The current program was created by Congress to provide loan forgiveness to teachers, police officers, and other public-sector workers after making qualifying payments. But numerous reports have found that the Department has rejected large numbers of applicants who were enrolled in the wrong repayment plan or who made application errors, angering workers who believed they were on the path to forgiveness. The contract with Grant Thornton, which totals $1.4 million, began on September 30, 2021, and is expected to end on March 30, 2022.

Separately, news reports and federal officials continue to foreshadow an upcoming announcement that the Department intends to major changes to PSLF, potentially outside of the negotiated rulemaking process occurring this week. On Monday, White House Press Secretary Jen Psaki remarked on the effort saying, "Fixing this program has been a priority for this administration from the first day. That's why in the coming weeks, the Department of Education plans to announce a major overhaul of the program." Today, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) and House Higher Education and Workforce Investment Subcommittee Ranking Member Greg Murphy (R-NC) sent a **letter** to Education Secretary Miguel Cardona urging him to work with Congress to reform the program. *"The [PSLF] program has been a magnet for confusion and mismanagement from day one," the members wrote. "But your Department is misconstruing the facts to justify an abuse of executive authority to carry out an unworkable overhaul of this program. T]he program, albeit flawed, was working as Democrats wrote it when they unilaterally passed this legislation. Conflating abiding by Congressional requirements with mismanagement is inaccurate, and using this falsehood as the rationale to skirt the law is reprehensible…We agree this program is in desperate need of reform; however, such reforms require Congressional action, and we encourage you to work with us to fix the federal loan and repayment program."*

For more coverage of the potential changes to PSLF, *see this article from **CNN***.

FSA Announces Transfer of Accounts for Departing Federal Student Loan Servicers

Last week, the U.S. Department of Education Office of Federal Student Aid (FSA) **announced** that some of the borrowers whose federal student loans are serviced by the Pennsylvania Higher Education Assistance Agency or FedLoan Servicing will be transferred to the Missouri Higher Education Loan Authority (MOHELA). FSA said that borrowers can expect notices from the federal government and MOHELA once the transfer is complete, and that additional transfers are expected to continue over the next year. FSA also said that it has begun transferring borrowers serviced by Granite State to Edfinancial, with all transfers expected to be completed before the end of the year.

Department of Education Announces Intention to Establish Negotiated Rulemaking Committee on 90/10 Rule

Yesterday, the U.S. Department of Education announced its intention to establish a negotiated rulemaking committee to review and revise those federal regulations governing the 90/10 rule. The committee will work to implement Section 2013 of the American Rescue Plan Act of 2021, which amended the Higher Education Act to require that a proprietary institution derive at least 10 percent of its revenues from sources that are not federal education assistance funds. Federal education assistance funds are defined as "federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution." This is a broader definition than was previously the case. The Department will hold virtual public hearings for interested parties to comment on the 90/10 rule on October 26 and 27, 2021. Individuals who would like to comment at one of the public hearings must register by sending an email message to negreghearing@ed.gov no later than 12:00 p.m. Eastern time on the business day prior to the public hearing at which they want to speak. Following a review of comments received, the Department will announce specific topics to be covered and a request for negotiators. The Department states that the negotiated rulemaking will begin no earlier than January 2022.

ARRC Newsletter Discusses LIBOR Transition

Today, the Alternative Reference Rates Committee (ARRC) released a newsletter describing its activities in August and September relating to the transition away from the London Interbank Offered Rate or LIBOR. According to the newsletter, media coverage has highlighted significant developments related to the use of the Secured Overnight Financing Rate (SOFR) in the loan market with SOFR trading now accounting for 30 percent of the USD swap market.

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:

- (GENERAL-21-62) Columbus Day Federal Holiday Processing and Customer Service Hours

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Member News

The Kentucky Higher Education Assistance Authority (KHEAA) released its Financial Aid Tip for Students – October 2021, which says that KY Saves 529, the state's official education savings vehicle, can be used to save money for children's K–12 education, as well as for college. KHEAA also released its Money Tip for Students – October 2021, which says that Kentucky students who want to invest some of their earnings should learn more about interest rates. Learning the basics about simple interest and compound interest will help them make better investment decisions.

General News

Inside Higher Ed reports that Congress has the opportunity to end the taxability of Pell Grants for lower-income students. But the provision -- like most other parts of the Build Back Better Act -- is in jeopardy.

Diverse Issues in Higher Education reports that, in the wake of the release of the $3.5 trillion budget reconciliation package by House Democrats, the United Negro College Fund has called on Congress to improve the legislation to more positively impact Historically Black Colleges and Universities.

Forbes reports the White House has said that President Joe Biden is ready to sign student loan forgiveness, but Congress has not passed any legislation to date.

Business Insider reports that the President's legal ability to cancel $50,000 in federal student debt per borrower is still unknown, and it has been more than 6 months.

CNBC reports that students are missing out on billions in college aid due to four common misconceptions with the Free Application for Federal Student Aid or FAFSA.

Higher Ed Dive reports that, as population tallies roll out, campuses and city halls worry a census interrupted by COVID-19 could choke available public dollars.

Forbes reports that, as the Free Application for Federal Student Aid completion rate declines, students could lose out on more than financial aid.

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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