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## NCHER Legal Meeting Set for October 24th in Chicago, Register Today!

The next NCHER Legal Meeting will be held on Thursday, October 24, 2024 at the law offices of Hinshaw & Culbertson LLP in Chicago, IL (151 North Franklin Street, Suite

2500, Chicago, IL 60606), so please mark your calendars and register today! While the meeting is four months away, we will begin planning the agenda later in the summer. Please let James Bergeron or Shelly Repp know if you are interested in helping with planning the program. As in the past, this will be a one-day meeting that will start around 8:30 am and end around 4:00 pm CT. The registration fee will be $500 for members. Meeting details, including a list of hotels close to the meeting, will be sent out and posted to the NCHER website as they become available.

Thanks to Vaishali Rao and our friends at Hinshaw & Culbertson for hosting the meeting!

## District Courts Issue Decisions Blocking Parts of Department of Education's SAVE Plan, Biden Administration Plans Appeal

On Monday evening, the U.S. District Court for the Eastern District of Missouri issued a decision in Missouri et al v. Biden granting a temporary injunction blocking the debt cancellation portion of the U.S. Department of Education's Saving on a Valuable Education (SAVE) Plan. Shortly thereafter, the U.S. District Court for the District of Kansas issued a decision in Alaska et al v. the U.S. Department of Education granting a temporary injunction blocking the monthly repayment reduction portion of the Plan. The two rulings, in response to lawsuits filed by Republican-led states, will halt key provisions of the Biden Administration's new federal student loan program, imperiling the plan to lower monthly payments and erase student debt for millions of Americans ahead of the November election. The SAVE program has been a cornerstone of the administration's efforts to provide student debt relief to borrowers even as the Covid-era payment pause expired last year and the White House's ambitions for mass loan forgiveness were blocked at the Supreme Court. More than 8 million loan borrowers are enrolled in the SAVE plan and the Department has already invoked the loan forgiveness provisions of the plan to cancel $5.5 billion of debt for 414,000 borrowers.

In the first case, Judge John Ross of the Eastern District of Missouri ruled that Missouri Attorney General Andrew Bailey and other plaintiff states who sued were likely to succeed on their claims that the administration lacks the authority to forgive student debt under the SAVE program. He also agreed that the program's loan forgiveness provisions would likely harm Missouri because it would reduce the fees that the

Department pays to MOHELA. The order takes effect immediately. In the second case, Judge Daniel Crabtree of the District of Kansas ruled that the states were likely to succeed on their claims that the Department lacked clear authority from Congress to enact the SAVE plan. But he declined to block the entirety of the program, citing concerns about the feasibility of unwinding the parts of the program that had already been implemented and that the states' delay in filing the lawsuit months after the plan was announced undercut their arguments that there was an immediate need to block the entire program. The order deferred the injunction until June 30th to give the administration time to appeal it.

During a press briefing following the court cases, White House Press Secretary Karine Jean-Pierre wrote on X that the, "Department of Justice will be appealing both decisions to block key provisions of our SAVE Plan. We will never stop fighting to lower monthly payments and help borrowers get out from under the burden of student debt — no matter how many times Republican elected officials try to stop us." In a statement issued on Tuesday, Education Secretary Miguel Cardona said that the Biden Administration strongly disagrees with the Kansas and Missouri District Court rulings and blamed Republican elected officials and special interests for blocking their own constituents from being able to benefit from the plan. "While we continue to review these rulings, the SAVE plan still means lower monthly payments for millions of borrowers - including more than 4 million borrowers who owe no payments at all, and protections for borrowers facing runaway interest when they are making their monthly payments," Secretary Cardona said.

For additional coverage, see the following articles:

- White House to appeal student loan repayment plan ruling - Politico
- Biden's new student loan relief plan is on pause. Here's what borrowers need to know - CNBC
- Judges block Biden plan wiping out student loans. Here's what to know. - CBS News
- Courts Freeze Parts of Biden's Student-Loan Plan: What the Rulings Mean for Borrowers - The Wall Street Journal
- Barack Obama Judges Strike Down Joe Biden's Student Loan Forgiveness - Newsweek
- Student loan relief and payment cuts for many on hold after courts block parts of Biden's SAVE plan - MarketWatch

## House Appropriations Subcommittee Passes Labor, Health and Human Services, Education, Appropropriations Act for Fiscal Year 2025; Includes One-Year Extension of Account Maintenance Fees

Today, the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies met in executive session and passed the Labor, Health and Human Services, Education, and Related Agencies Appropriations Act for Fiscal Year 2025 by voice vote.

In his opening statement, Subcommittee Chairman Robert Aderholt (R-AL) said that the United States remains subject to persistently high inflation, which has been largely driven by excessive post-pandemic spending and partisan reconciliation bills that has resulted in the largest spike in interest owed on the national debt in over 20 years. He said that Congress must stop its out-of-control spending spree and take a critical view of some of the "nice to have" programs, including those contained in the bill. He said that the legislation represents a clear first step toward returning to fiscal responsibility, while ensuring that funding for critical and high-priority functions are maintained such as support for Pell Grants. As is tradition, there were no amendments offered during subcommittee consideration. In her opening statement, Ranking Member Rosa DeLauro (D-CT) criticized the partisan process and urged the subcommittee to abandon the needless chaos that has permeated the budget and appropriations process. She said that the legislation before the subcommittee doubles down on the "already tried, trodden, and failed strategy of writing blatantly partisan bills that will never become law" and that it "decimates support for K-12 education, and it abandons college students and lower-income workers trying to gain an education or advance their career for their chance at the American Dream." Similar to the past, no amendments were offered in subcommittee.

As previously reported, the Labor, Health and Human Services, Education, and Related Agencies Appropriations Act provides $185.8 billion for programs under the jurisdiction of the U.S. Department of Education, U.S. Department of Labor, and U.S. Department of Health and Human Services. The funding level is $23.8 billion (or 11 percent) below the FY 2024 enacted level and $36.2 billion below the President's budget request. According to a summary, the bill eliminates 57 programs, including 21 that are not authorized, and reduces funding for 48 other programs.

The legislation includes the following provisions of importance to the NCHER membership:

- The bill provides $72 billion in discretionary funding for the Department of Education, which is $11 billion (or 13 percent) below the FY 2024 enacted level and $14.5 billion below the President's budget request. The bill provides $23.5 billion for federal financial aid programs, including Pell Grants, Federal Supplemental Opportunity Grants, TRIO Programs, and GEAR Up.
- The bill maintains funding for Pell Grants at the maximum amount of $6,335. When including both discretionary and mandatory funding, the maximum award will be $7,395, the same as provided in FY 2024.
- The bill extends the authority for account maintenance fees paid to guaranty agencies for an additional year. The language is as follows: SEC. 306. Section 458(a)(4) of the HEA (20 U.S.C. 22 1087h(a)) shall be applied by substituting ''2025'' for ''2021''.
- The bill provides $1.53 billion for federal student aid administrative expenses. It includes long-standing language requiring the Secretary of Education to allocate new student loan borrower accounts to eligible student loan servicers on the basis of their past performance compared to all loan servicers utilizing established common metrics and on the basis of the capacity of each servicer to process new and existing accounts, and language prohibiting the Secretary from awarding contracts for a new federal student loan servicing environment unless it provides for the participation of multiple student loan servicers that contract directly with the Department to manage a unique portfolio of borrower accounts and the full life-cycle of loans from disbursement to pay-off. It does not include last year's language requiring the Secretary to reallocate accounts from servicers for reoccurring noncompliance with Federal Student Aid (FSA) guidelines, contractual requirements, and applicable laws, including failure to sufficiently inform borrowers of available repayment options. It also does not include language requiring that federal student loan servicers be evaluated on their ability to meet contractual requirements (including an understanding of federal and state law), future performance on the contracts, and history of compliance with consumer protection laws; requiring that federal prime contractors are held accountable for meeting the requirements of their contract and the performance and expectations of subcontractors; and requiring FSA to provide more support to borrowers at risk of delinquency or default in any new federal loan servicing environment.

- The bill prohibits the Department of Education from: (1) implementing the modifications of statutory and regulatory provisions relating to debt discharge that was published in the Federal Register on October 12, 2022; (2) implementing, administering, or enforcing a final rule creating a new Income-Driven Repayment Plan; (3) implementing, administering, or enforcing the new borrower defense to repayment rule published in the Federal Register on November 1, 2022; (4) implementing, administering, or enforcing the new 90-10 rule published in the Federal Register on October 28, 2022; and (5) implementing, administering, or enforcing the new gainful employment and financial value transparency rule published in the Federal Register on October 10, 2023.

The bill now heads to the House Appropriations Committee, which plans to consider it on July 10, 2024. For further coverage, including an archived webcast of the markup session, visit the committee website.

## Department of Education Releases Blog on Implementation of Joint Consolidation Loan Separation Act

Yesterday, the U.S. Department of Education released a blog post about implementing the Joint Consolidation Loan Separation Act, which was signed into law on October 11, 2022. The blog post says that, since passage of the new law, Federal Student Aid (FSA) has been working to create an application for joint consolidation loan co-borrowers, which underwent two rounds of public comment, the last of which concluded on June 06, 2024. Over the next several weeks, FSA will finalize the application and promissory note intending to make it publicly available in the Fall of 2024, with processing to follow. Upon availability, borrowers will be able to submit a:

- Joint Application: Both co-borrowers submit individual App/Notes to the Department, which will separate the joint consolidation loan and create a new, individual Direct Consolidation Loan for each individual; or,
- Separate Application: An individual joint consolidation loan applicant submits an App/Note to the Department without regard to whether or when the co-borrower applies, if the applicant has experienced an act of domestic violence or economic abuse from the other co-borrower, or if they are unable to reasonably reach or access the loan information of the other co-borrower.

Once the loans are separated, the applicants' loan obligation will be consolidated into a Direct Consolidation Loan if both borrowers completed the joint application process. For those who submit a separate application, the applicant's loan obligation will follow the

same process as the joint application process, but if the remaining co-borrower does not complete an application, their loan obligation will remain a joint consolidation loan with one borrower. In late fall, FSA hopes to open the process for applications, in collaboration with servicers and begin processing applications, in partnership with federal student loan servicers, by the end of the year.

## National Student Clearinghouse Research Center Report Finds College Students' Persistence and Retention Rates Climbed Back to Pre-Pandemic Levels

Today, the National Student Clearinghouse Research Center released its latest report on Persistence and Retention, which found the national persistence rate for students who started college in the fall of 2022 rose to 76.5 percent, up 0.8 percentage points compared to the fall 2021 starting cohort, and the national retention rate was 68.2 percent, up 1.0 percent compared to the last starting cohort. This marks the second straight year of improved persistence and retention, with both rates higher than they have been at any point in the last decade, and shows that college students' persistence and retention rates have climbed back to pre-pandemic levels. Persistence measures the share of students who stayed in college from freshman to sophomore year, while retention refers specifically to those who stayed at the same institution.

Other key findings include the following:

- All main institution sectors saw higher persistence and retention rates compared to the fall 2021 cohort except for private nonprofit 4-year institutions where rates slipped.
- Community colleges have seen the highest gains in retention rates over the last decade, with the retention rate for entering community college students rising 3.7 percent from 51.3 percent for those who started in the fall 2013 term to 55.0 percent for fall 2022 starters.
- Public 4-year institutions have also had large retention rate gains since 2013, with the retention rate for fall 2022 starters (78.0 percent) standing 3.1 percent higher than the rate for fall 2013 starters (74.9 percent).
- Both full-time and part-time starters in fall 2022 saw persistence rate gains of 0.9 percent and retention rate gains of over 1.0 percent compared to starters the previous fall. Full-time starters had a persistence rate of 82.9 percent and a

retention rate of 74.5 percent. The comparable numbers for part-time starters were 52.3 percent and 45.7 percent, respectively.

- Since 2018, public 4-year institutions have consistently surpassed their private nonprofit 4-year peers in retaining full-time students, with a 1.7 percent higher rate for the 2022 cohort. Prior to 2017, the pattern was reversed with private nonprofit 4-year institutions retaining more full-time starters.

For further coverage on the report, see this article from Inside Higher Ed.

## SHEEO Report Examines FAFSA Simplification Successes

The State Higher Education Executive Officers Association recently released a new report titled, FAFSA Simplification Successes: A Four-State Case Study of Best Practices and Completion Strategies. The report looks at Alabama, Illinois, Louisiana, and Minnesota and their successful strategies to implement and employ Free Application for Federal Student Aid (FAFSA) completion initiatives for the current cycle. The report found the following:

- The Minnesota Office of Higher Education (OHE) began preparing early for FAFSA simplification changes in the state, starting with the creation of a cross-agency working group in 2021. The working group met frequently to develop a roadmap and timeline for forthcoming changes, with consideration of the state's legislative schedule. Importantly, OHE leveraged long-standing relationships with partners outside of the agency, including high schools, campuses, and community organizations. The state context in Minnesota enabled OHE to move swiftly and efficiently to prepare for the impending changes of simplification. The office maintained strong, positive relationships with the system offices of the public institutions in the state as well as with the state legislature.
- Since 2008, the Louisiana Office of Student Financial Assistance (LOSFA) has been involved in statewide FAFSA completion efforts. LOSFA developed strategies over the past six years in conjunction with the universal FAFSA policy to deepen the culture of FAFSA completion throughout the state. With the repeal of the policy and the rollout of the new FAFSA, LOSFA staff will continue to ensure that students who want to complete a FAFSA are still able to do so, regardless of the impact on high school graduation. With the implementation of the policy, LOSFA staff pivoted

to holding completion events at high schools (rather than primarily at colleges), including all-day events at multiple locations across the state. LOSFA has also facilitated relationships between local high schools and colleges in the community to assist with these completion events (particularly as college staff await ISIRs to process aid packages).

- In conjunction with a high school graduation mandate, the Alabama Commission on Higher Education (ACHE) contracted with Oracle Student Financial Planning to manage and track the FAFSA completions of Alabama's graduating seniors, report on student errors found in the FAFSA completion process, and provide supportive information for high schools and their counselors. Oracle supplies the ACHE FAFSA Portal with real-time FAFSA completion data and manages the technical and systemic changes needed to adjust to the new FAFSA. Oracle Student Financial Planning provides useful information that enables ACHE to focus on strategies that promote FAFSA completion across the state. ACHE sends letters directly to high school seniors via email, encouraging students to complete the FAFSA and informing them of their FAFSA status, such as identifying specific errors found with their individual submissions. In addition, high school counselors receive information as it relates to the FAFSA status of their students and schools, along with offers of assistance and troubleshooting from ACHE staff.
- The Illinois Student Assistance Commission (ISAC) has fostered a statewide culture of FAFSA completion through extensive outreach and support for students. ISAC began using FAFSA data matching to drive FAFSA completion in 2007. That effort began in partnership with Chicago Public Schools and was extended to all schools statewide in 2017. In 2009, ISAC created ISACorps, a group of highly trained recent college graduates serving as near-peer mentors to high school students. ISACorps members serve every county in the state and provide mentoring and support for students and their families through the college application process, including completing the FAFSA. The standard term of service for an ISACorps member is two years, however, in light of the challenges with FAFSA simplification, they have the option to extend their contracts for an additional year. ISAC has also used a text messaging service to connect college-bound students with financial aid experts at the agency since January 2016. Via the text messaging service, students and parents can ask questions about the college application, admission, and financing processes, including FAFSA completion assistance. New for this year, high school counselors and college access professionals can also use the service to seek technical assistance.

The case studies found that the four states shared similar themes in order to prepare to implement the FAFSA Simplification Act: states had high staff capacity, were involved in early planning, and had engaged in cross-agency collaboration and trust building.

## Financial Aid Tech Company Releases New Survey Showing Amount of Financial Aid Received is Most Important Factor in Student Choosing Where to Attend

Yesterday, Ellucian, a financial aid technical solutions company, released a new survey that says, for most prospective college students, the amount of financial aid they receive is one of the most important—if not the most important—factor in choosing where to attend postsecondary education. According to a new survey, 76 percent of students said their financial aid award helped them determine where they enrolled, and 44 percent said they would switch their top choice institution if they received $5,000 more from another college. The report is based on a survey of 1,500 students, 58 percent of whom are working adult students and 42 percent of whom are traditional-age students. Twenty-two percent of respondents also said they would choose a different institution if the paperwork processing at one took more than two weeks, 73 percent said they would move on if it took over a month, and 92 percent would look elsewhere if processing took eight weeks. The report also showed that students care about a college financial aid office's accessibility and support infrastructure when parsing their financial aid offers. Forty-four percent of respondents said they would hang up after 15 minutes on hold on a college's help line, and 83 percent said they valued having 24-7 access to support. The findings are especially relevant after this year's chaotic financial aid cycle, in which processing was delayed by weeks or months in some cases due to the rollout of the new Free Application for Federal Student Aid. For additional coverage on the report, see this article from Inside Higher Ed.

## 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:

- (EDESUITE-24-05) Availability of Campus-Based Service Release for EDExpress for Windows 2024–2025, Release 2.0

- (GENERAL-24-79) Reminder – July 31 Reporting Deadline for Section 117 of the Higher Education Act of 1965; Decommission of the Section 117 Interactive Data Table
- (GENERAL-24-78) Reminder – Institution Responsibilities under the Clery Act
- (DL-24-04) Additional 2022–23 Direct Loan Program Year Closeout Information
- (GENERAL-24-77) SAIG Message Class File Update
- (CB-24-13) Operational Information – Reporting Calendar Year 2023 Federal Work-Study Earnings to the COD System Using the Campus-Based XML Schema Version 1.0b

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## General News

Higher Ed Dive reports that, amid operating pressures, some institutions of higher education are struggling to meet financial metrics stipulated in their bond and loan covenants.

Inside Higher Ed reports that, as the President and former President face off in their first debate, higher education leaders gave an earful when asked what they would ask the candidates.

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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