



DAILY BRIEFING

Thursday, June 23, 2022

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NCHER Summer Legal Meeting: Draft Agenda Just Released, Register Today

NCHER's Summer Legal Meeting will be held on Thursday, July 28, 2022 at the law offices of Norton Rose Fulbright (799 9th Street, NW, Suite 1000) in Washington, DC. 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. The [draft agenda](#) was recently released, and will cover many of the topics of current interest, including sessions on federal student loan forgiveness and Operation Fresh Start, an update on actions of the Consumer Financial Protection Bureau, new state laws affecting student loan servicing and private loan origination, recent developments in financing federal and private loans, and an overview for federal contracting. For additional information or to register, visit the [NCHER website](#). If you have any questions, please feel free to reach out to Shelly Repp at shellyrepp@ncher.org.

House Appropriations Subcommittee Approves FY 2023 Labor, HHS, Education Appropriations Act

This afternoon, the House Appropriations Subcommittee on Labor, Health and Human Services (HHS), Education, and Related Agencies approved the [Fiscal Year \(FY\) 2023 Labor, Health and Human Services, Education, and Related Agencies Appropriations Act](#), by voice vote. As is customary, there were no amendments offered to the bill during the subcommittee markup as Democrats and Republicans save any policy changes to full committee, which is expected to consider the legislation next Thursday.

In her [opening statement](#), Full Committee and Subcommittee Chairwoman Rosa DeLauro (D-CT) said that the FY 2022 funding bill made transformative investments that are helping working families with high costs of living, creating American jobs, supporting workers, and strengthening our health care infrastructure. But she said that too many hardworking Americans are struggling - pay has not kept up with inflation, people are living paycheck to paycheck, women have been pushed out of the workforce and have trouble accessing good childcare, and educational opportunity remains hard to reach for so many. Because of this, she said that the bill makes important and necessary investments. Chairwoman DeLauro said that, as the nation works to strength the education of our children, it must also recognize that higher education remains unreachable for far too many. "We are expanding access to postsecondary education with a critical \$500 increase to the maximum Pell Grant," she said. "And as we renew our commitment to underserved students, we are reinvesting in Minority Serving Institutions, Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions, and Tribally Controlled Colleges and Universities with \$1.1 billion." Chairwoman DeLauro thanked Ranking Member Tom Cole (R-OK), who is retiring from

Congress later this year, for his work on the subcommittee and that it has been a pleasure to work with him over the past seven years.

In her [opening statement](#), Full Committee Ranking Member Kay Granger (R-TX) thanked Ranking Member Cole for his service on the subcommittee. She said that, while the bill funds many important programs, it is based on an overall funding level that passed the House without Republican support and includes several controversial policies that she opposes such as excessive spending on new, unauthorized programs. “For these reasons, my Republican colleagues and I strongly oppose this bill,” she said. In his opening remarks, Ranking Member Cole thanked Chairwoman DeLauro for incorporating many of his priorities in the draft version of the bill, including increased funding for TRIO and GEAR UP that help first-generation students complete postsecondary education. He said that he would be opposing the legislation at this point since Americans are struggling and the increased funding in the bill would contribute to inflation.

As reported previously, the draft bill would provide \$242.1 billion in discretionary funding for the U.S. Department of Labor, U.S. Department of Health and Human Services, and U.S. Department of Education, an increase of \$28.5 billion or 13 percent over the FY 2022 enacted appropriations bill. A summary of the legislation released by the committee can be found [here](#).

Key education provisions of interest to the NCHER membership include the following:

- The bill provides \$86.7 billion in discretionary funding for the Department of Education, which is \$10.3 billion above last year’s level. The legislation provides \$24.6 billion for federal student aid programs, an increase of \$59 million above the FY 2022 enacted level.
- The legislation sets the maximum Pell Grant award at \$7,395 an increase of \$500 over the 2022 enacted level, funded by a combination of discretionary and mandatory funds.
- The bill provides \$920 million for the Federal Supplemental Educational Opportunity Grant program, an increase of \$25 million above the 2022 enacted level, and \$1.2 billion for Federal Work Study, an increase of \$34 million above the 2022 enacted level.
- The legislation provides \$1.3 billion for TRIO Programs and \$408 million for GEAR UP, which help first-generation college students prepare for, enter, and complete

college. TRIO programs are increased by \$161 million and GEAR UP programs will see an increase of \$30 million.

- The bill extends the authority for account maintenance fees paid to guaranty agencies for an additional year.
- The legislation provides \$2.58 billion for federal student aid administrative expenses. It includes legislative language requiring that federal student loan servicers be evaluated on their ability to meet contractual requirements (including an understanding on federal and state law), future performance on the contracts, and history of compliance with consumer protection laws. It also requires that federal servicers are held accountable for meeting the requirements of their contract, the performance and expectations of subcontractors, and that contractors have the capacity to meet and are held accountable for performance on service levels, held accountable for and have a history of compliance with consumer protection laws, and have relevant experience and demonstrated effectiveness. The bill does not retain long-standing language requiring the Secretary of Education to allocate new borrower accounts to student loan servicers on the basis of their past performance, utilizing established common metrics, nor language allowing borrowers who are consolidating federal student loans to select from any student loan servicer to service their new consolidated student loan.
- The legislation modifies the 90/10 rule to increase the percentage of non-federal funds that proprietary colleges must receive to 15 percent (making it an 85/15 rule).
- The bill amends the Higher Education Act to expand eligibility for federal student aid to included Deferred Action for Childhood Arrivals or DACA participants and those who have received temporary protected status under the Immigration and Nationality Act.

For additional coverage, including an archived webcast of the markup session, visit the [committee website](#).

Department of Education Announces Settlement to Discharge Borrower Defense to Repayment Claims for 200,000 Borrowers

The U.S. Department of Education released a settlement in *Sweet v. Cardona*, a class action lawsuit that challenged the Department's handling of borrower defense to repayment

claims. Under the settlement, the Department agreed to discharge over \$6 billion in federal student loan debt for around 200,000 borrowers involved in the suit who claimed that they had been defrauded by institutions of higher education. The settlement still needs to be approved by a judge in order for affected students to receive debt cancellation. Of the approximately 200,000 students involved in the settlement, about 74,000 students had their borrower defense claims denied without explanation by the Trump Administration; the Department will rescind those earlier denials. In a [statement](#) on the settlement, Education Secretary Miguel Cardona said, “Since day one, the Biden-Harris Administration has worked to address longstanding issues relating to the borrower defense process. We are pleased to have worked with plaintiffs to reach an agreement that will deliver billions of dollars of automatic relief to approximately 200,000 borrowers and that we believe will resolve plaintiffs’ claims in a manner that is fair and equitable for all parties.” The Department and the plaintiffs in the case have asked the judge overseeing the case to hold a hearing on July 28th on the settlement.

For additional coverage, see these articles from [CNBC](#), [The Hill](#), and [Forbes](#).

FTC Provides \$2 Million to Students Harmed by Student Debt Doctor

The Federal Trade Commission (FTC) recently [announced](#) that 22,817 borrowers will receive over \$2 million in relief to cover money lost in a student loan debt relief scam involving Student Debt Doctor. In 2017, the FTC sued Student Debt Doctor and its owner Gary B. White Jr. for charging consumers a large upfront fee with the false promise of relief from monthly loan payments. The Commission also alleged that Student Debt Doctor communicated to borrowers that their loans were in forbearance when they actually were not, which led borrowers to fail to make necessary payments. Mr. White was subsequently banned from the third-party debt relief industry. The funding that borrowers are receiving for this suit comes from settlements entered into prior to the 2021 decision issued by the U.S. Supreme Court that the FTC lacked the authority to seek monetary relief in federal court going forward.

House and Senate Education Committee Republicans Send Letter Questioning Department of Education Ties to Debt Collective

Today, House Education and Labor Committee Ranking Member Virginia Foxx (R-NC) and

Senate Health, Education, Labor, and Pensions Committee Ranking Member Richard Burr (R-NC) sent a [letter](#) to Education Secretary Miguel Cardona questioning the U.S. Department of Education and Federal Student Aid's (FSA) ties to the advocacy group, the Debt Collective. "It is very troubling to learn that the Department appears to be following advice from activists to inappropriately target an important sector in postsecondary education," the lawmakers wrote. "There has been public reporting on a meeting between Federal Student Aid Chief Operating Officer Richard Cordray and the Debt Collective to discuss a memo the organization provided on closing private institutions of higher education without congressional authorization. We understand your Department hears from a wide range of stakeholders, but it is concerning to see signs your staff is following instructions from radical groups. When the conversation on quality is premised on the tax status of an institution, it is distracted from the most important metric to focus on: student success." The letter asks for memos and correspondence received by the Department and FSA from the Debt Collective for evidence that it is arbitrarily targeting for-profit institutions.

House Appropriations Committee Releases FY 2023 Financial Services and General Government Appropriations Act

Today, the House Appropriations Committee released the [Fiscal Year 2023 Financial Services and General Government Appropriations Act](#), which includes funding levels and policy for the U.S. Department of Treasury, Consumer Financial Protection Bureau (CFPB), Federal Trade Commission, Securities and Exchange Commission, and Federal Communications Commission (FCC). The [committee report](#) includes the following language that may be of interest to the NCHER membership:

U.S. Department of Treasury

Financial Literacy. The Committee is concerned about the low level of financial literacy and numeracy skills among the adult population of the United States, as well as among primary and secondary students as they enter the workforce or pursue post-secondary education. As the Department develops and implements initiatives to educate and empower consumers to make better informed financial decisions, the Committee directs the Department to work with the Financial Literacy and Education Commission (FLEC) to develop materials that effectively serve at-risk groups, such as communities of color and historically disadvantaged individuals. Further, the Committee encourages the

Department to explore the degree to which existing Federal financial literacy programs benefit those individuals with low literacy skills and to develop measurable goals and objectives for the FLEC that address the needs of this population. Finally, the Committee urges the Department to explore opportunities to work with rural community-based adult and family literacy organizations to promote and implement future financial literacy initiatives.

Student Loans. The Committee urges the Department, in coordination with federal banking regulators, to continue to encourage financial institutions to work constructively with private student loan borrowers experiencing financial difficulties.

Treasury Cross-Servicing Program. The Committee encourages the Fiscal Service to increase its oversight of private collection agencies that assist in the collection of non-tax debt through the Treasury Cross-Servicing Program. As the Fiscal Service prepares future solicitations for private debt collection, the Committee encourages the Bureau to conduct robust market research to identify qualified small- and medium-sized entrants, and to prioritize private collection agencies that have the strongest record of performance and a demonstrated record of compliance with applicable consumer protection laws. The Committee looks forward to the briefing required in House Report 117-79.

Consumer Financial Protection Bureau

The Committee strongly supports the CFPB's work to empower and protect consumers by regulating offerings of consumer financial products and enforcing violations of consumer financial laws and regulations. The Committee directs CFPB to take aggressive action to protect consumers, including those negatively affected by the COVID-19 pandemic.

Federal Communications Commission

Robocalls. The Committee remains concerned about the rapidly growing problem of robocalls and understands that the FCC receives more consumer complaints about robocalls than any other single issue. The FCC is directed to provide a report to the Committee within 90 days of enactment of this Act detailing the status of implementation of the TRACED Act (P.L. 116-105).

Robocall Penalty Collection. The Committee is aware of significant delays in collecting

and enforcing financial penalties levied under the Telephone Consumer Protection Act (TCPA) and is concerned that these fines serve as an insufficient deterrent to potential TCPA violators. The Committee urges the FCC to regularly discuss collections of these fines with the Department of Justice to ensure timely collection and to report to the Committee every three months after enactment of this Act on the status of collected and uncollected penalties.

The House Appropriations Committee is slated to meet in executive session to consider the appropriations bill tomorrow morning. For more information, including the live webcast of the markup session, visit the [committee website](#).

Federal Reserve Chair Powell Addresses Monetary Policy and the Economy at House Financial Services Committee Hearing

Today, the House Financial Services Committee held a hearing titled, “Monetary Policy and the State of the Economy,” with Federal Reserve Board of Governors Chairman Jerome Powell. In her [opening statement](#), Chairwoman Maxine Waters (D-CA) stated that, while it is important for the central bank to fight inflation, she would caution against an approach that ignores the Fed’s maximum employment mandate. She also indicated that, while increased costs make borrowing to buy a home more expensive, Congress needs to make investments in housing construction to increase supply. She also stated that: “We are also facing corporate consolidation and greed. Without healthy competition to drive down prices, mega-corporations, driven by profit, are exploiting their economic power to squeeze Americans to the breaking point.” In his [opening statement](#), Ranking Member Patrick McHenry (R-NC) said that the nation is facing high inflation because of the President’s support for the \$2 trillion American Rescue Plan passed by Congress. “Democrats are still on the hunt for a scapegoat,” he said. “They’ve blamed oil companies, the war in Ukraine, and supply chain issues in Asia. But let’s be clear, it’s the Democrats’ trillions in wasteful spending that resulted in higher grocery bills and soaring gas prices.” He said the Fed has its work cut out in fighting inflation.

In his [prepared statement](#), Chairman Powell said the Fed is highly attentive to inflation risks and is determined to take the necessary measures to restore price stability. He indicated that making appropriate monetary policy in this uncertain environment requires a recognition that the economy evolves in unexpected ways and that inflation surprised on the upside over the past year. The Chairman said that he anticipates ongoing

rate increases will be appropriate, and that “our overarching focus is using our tools to bring inflation back down to our 2 percent goal and to keep longer-term inflation expectations well anchored.”

During the question-and-answer portion of the hearing, Chairwoman Waters blamed higher prices on corporate consolidation; Chairman Powell responded by saying that the nation’s economy has become more concentrated, but it is not clear that there is a connection between the concentration and inflation. Ranking Member McHenry referred to Treasury Secretary Janet Yellen’s statement that corporate greed is not the reason for inflation. Rep. Gregory Meeks (D-NY) asked about the cause of inflation; Chairman Powell said that inflation is due to consumer demand and the Fed has tools to deal with that. Rep. Ann Wagner (R-MO) pointed out that unemployment may move up because the Fed does not have the precise tools to deal with inflation; Chairman Powell agreed that the Fed underestimated inflation last year. Rep. Wagner also mentioned that there are risks with the President’s promise to cancel billions of dollars in federal student loan debt. Rep. Tom Emmer (R-MN) said the country needs to go on a spending diet and asked the Chairman whether the American Rescue Plan impacted inflation; Chairman Powell declined to answer the question. Rep. Jim Hines (D-CT) asked the Chairman about systemic risk in the financial markets; Chairman Powell responded that the markets are working well, though he did acknowledge that there is some illiquidity in the Treasury market that they are looking at.

Rep. John Rose (R-TN) referred to an estimate from the Committee for a Responsible Federal Budget that canceling federal student debt could boost inflation by half a percent, and discussed the effect on cost of college. Chairman Powell said the Fed looks to the Congressional Budget Office and the White House Office of Management and Budget for the possible impact of federal policy, and that he does not want to draw the Fed into political issues. Rep. Pete Sessions (R-TX) said that federal student loan cancellation would provide the next large hit to inflation, and suggested that Chairman Powell send a memo to the President on this. He said that Democrats are making friends with inflation.

For additional coverage, including an archived webcast of the hearing, visit the [committee website](#).

National Student Clearinghouse Releases Report on Undergraduate Degree Earners

The National Student Clearinghouse released a new report titled, [Undergraduate Degree Earners](#), which is published annually and provides demographic and educational profiles for all students graduating with a certificate, associate degree, or bachelor's degree. The current report profiles graduates in the 2020-21 academic year, with a focus on first-time versus non-first-time graduates, and changes in demographics and education credentials received over the last nine academic years, since 2012-13. Key findings of the report include the following:

- The total number of undergraduate credential earners increased by 1.1 percent or 39,000 to 3.7 million graduates. After a brief standstill in the previous year, graduate numbers began to rise again.
- The latest growth was led by non-first-time graduates – students earning stacked credentials – who had the largest one-year growth since 2012 (+3.9 percent or +37,800 students). The growth was more pronounced among bachelor's degree recipients (+5.1 percent or +27,700 students).
- First-time graduate numbers have stabilized, following an unusually large drop the year prior (-0.9 percent or - 25,400). Certificate earners continued a downward trend (-2.6 percent or -11,800), while baccalaureates continued to increase (+0.7 percent or +10,600). Associate degree earners showed signs of rebound (+0.3 percent or +2,500) following a major drop the year prior (-3.7 percent or -28,000).
- Traditional college-age students under 25 continued to decline in first-time associate degree and certificate completion, the age group comprising the majority of sub-baccalaureate level completers. An increase in non-traditional-age first-time graduates (25 and older) is notable this year (+1.4 percent, +10,350) due to the unusual one-year growth in graduates in their 30s (+4.3 percent, +10,700).

For additional coverage, see this article from [Inside Higher Ed](#).

U.S. Department of Education News

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

The following announcement was posted to the Federal Student Aid's Knowledge Center Website:

- [\(GENERAL-22-32\) Independence Day Federal Holiday Processing and Customer Service Hours](#)
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Member News



Western Governors University (WGU) is a private, online, nonprofit, accredited higher education institution with over 130,000 students in all 50 states. WGU is

announcing a Request For Information (RFI) to identify potential preferred lending providers. The first round of RFI responses will be evaluated starting on August 8, 2022. To obtain the complete RFI, please make a request via e-mail to WGU's Procurement Department at wgubidbox@wgu.edu; ensure the subject line references "**RFI # MT [PRC0002129](#) – Preferred Lender**". After August 8, 2022, responses will be periodically reviewed on a rolling basis.

General News

[Inside Higher Ed](#) reports that Purdue University has paused new enrollments in its income-share agreement, a financing mechanism both praised as a bold experiment to make college more accessible and criticized as a predatory scheme that traps students in dodgy and expensive contracts.

[CNBC](#) reports that the White House's decision on federal student loan forgiveness is coming soon and what that could mean for borrowers.

[IBL News](#) reports that an overwhelming majority of Americans believe that the federal government should prioritize making college more affordable over forgiving existing student loans, according to a new NPR/Ipsos poll. Meanwhile, a narrow majority of Americans support forgiving up to \$10,000 in federal student loans. But support wanes for a larger amount.

[Community College Daily](#) reports that the American Association of Community Colleges recently asked some of its member colleges how they have used their allotment of federal funds through the Higher Education Emergency Relief Fund - responses ranged from commonly reported activities, such as investing in technology, to the more unique, such as provide grants to cover gas costs to drive to campus.

[Higher Ed Dive](#) examines the impact of the U.S. Department of Education's decision to push back the timeline for publishing its proposal for a revised gainful employment rule to next year, meaning the earliest it could go into effect is mid-2024.

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