DAILY BRIEFING

Thursday, October 13, 2022

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Federal Judge Hears Case from State Challenges to Federal Student Loan Forgiveness Plan

On Wednesday, U.S. District Court for the Eastern District of Missouri, Eastern Division, Judge Henry Edward Autrey held a hearing on the motion for a preliminary injunction in the **lawsuit** filed by six states asking the court to declare that the Biden Administration's federal student loan forgiveness program (which it refers to as "Mass Debt Cancelation") violates the U.S. Constitution's separation of powers, violates the Administrative Procedures Act, and is arbitrary, capricious, and an abuse of discretion. The states, which

include Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina, argue that the U.S. Department of Education be temporarily restrained and preliminarily and permanently enjoined from implementing the new program.

During the hearing, Judge Autrey discussed whether the states have standing to bring the case against the federal student loan forgiveness plan. He likened standing, a legal threshold to bring a case, to baking a cake. “You can have all the ingredients for a cake,” Judge Autrey said. “But it’s hard to make a cake if you don’t have a pan to put the cake in. The pan is the standing.” The states argued in court that the Biden Administration does not have the legal authority to grant broad student loan forgiveness, and that the policy would hurt them financially. The U.S. Department of Justice argued that Congress gave the Secretary of Education the power to discharge federal student loan debt under the HEROES Act of 2003, and that the plaintiffs do not have standing to ask for an injunction. To win a preliminary injunction, the states are required to demonstrate that the student loan forgiveness policy will cause them irreparable harm if the injunction is not implemented. But experts say that the last-minute policy change to exclude Federal Family Education Loan borrowers from receiving relief if they consolidate into the Direct Loan program could weaken the states’ lawsuit. After hearing from the lawyers for both parties, Judge Autrey declared a recess and told the attorneys they would hear from him soon.

For additional coverage, see these articles from ***CNN***, ***Reuters***, and ***Business Insider***.

Department of Education Publishes *Federal Register* Notice on Student Loan Forgiveness Using HEROES Act

On Wednesday, the U.S. Department of Education published a **notice in the *Federal Register*** listing the waivers and modifications of statutory and regulatory provisions governing the federal student financial aid programs under the Higher Education Relief Opportunities or HEROES Act. The notice says that pursuant to the HEROES Act, the Secretary of Education has chosen to modify select provisions of the Direct Loan program to provide that, notwithstanding any other statutory or regulatory provision, the Department will discharge the balance of a borrower's eligible loans up to a maximum of: (a) $20,000 for borrowers who received a Pell Grant and had an Adjusted Gross Income (AGI) below $125,000 for an individual taxpayer or below $250,000 for borrowers filing jointly or as a Head of Household, or as a qualifying widow(er) in either the 2020 or 2021 federal tax year; or (b) $10,000 for borrowers who did not receive a Pell Grant and had an AGI on a Federal tax return below $125,000 if filed as an individual or below $250,000 if

filed as a joint return or as a Head of Household, or as a qualifying widow(er) in either the 2020 or 2021 federal tax year. The waiver is applicable to borrowers with eligible loans who apply by the deadline established by the Secretary and who are determined to be eligible by the Department. Borrowers who are eligible for relief without applying will have the option to opt out of the program. Eligible loans include the following categories of loans, provided they were disbursed by June 30, 2022: Direct Loans, Federal Family Education Loans (FFEL) loans held by the Department or subject to collection by a guaranty agency, and Perkins Loans held by the Department. Direct Consolidation loans disbursed after June 30, 2022, and for which the repaid loans were loans described in the paragraph above, are also eligible for relief. However, Direct Consolidation loans disbursed after June 30, 2022, and for which the repaid loans include a FFEL loan not held by ED, are only eligible for relief if the borrower submitted an application to consolidate such loans prior to September 29, 2022.

The waivers and modifications also include the automatic suspension of payment and application of a zero percent interest rate for affected individuals with Direct Loans, federally held FFEL, federally held Perkins Loans, federally held Health Education Assistance Loans), and defaulted FFEL loans until December 31, 2022.

CBO Monthly Budget Review Cites Student Loan Forgiveness as Main Reason for Bigger Deficit

On Tuesday, the Congressional Budget Office (CBO) released its **Monthly Budget Review for September 2022**. The review found that the federal budget deficit was $1.4 trillion in fiscal year 2022, which is about half of last year's deficit of $2.8 trillion. The review stated that federal outlays are now estimated to be greater than CBO estimated in May by $401 billion or 7 percent because of the $426 billion in costs incurred by the U.S. Department of Education to implement the short- and long-term costs of its federal student loan forgiveness plan. CBO stated that, according to the Federal Credit Reform Act, the full multiyear costs of the student debt forgiveness plan are recorded upfront on a present-value basis.

Federal Reserve Releases Minutes Stressing Commitment to Fight Inflation

Earlier this week, the Federal Reserve Board of Governors released the **minutes** of its meeting of the Federal Open Market Committee (FOMC) held on September 20–21,

2022. At that meeting, the FOMC raised the federal funds rate by 75 basis points for the third successive meeting. The minutes indicated that participants believe the interest rate increase was needed to address inflation that is well above the central bank's two percent objective The minutes also stated that the FOMC members "anticipate that ongoing increases in the target range for the federal funds rate would be appropriate to achieve the Committee's objectives," and the rate hike was seen as a step toward making monetary policy sufficiently restrictive to bring inflation back to two percent. Many participants believed that the cost of taking too little action to bring down inflation outweighed the cost of taking too much action, with a couple of participants pointing to historical experiences that demonstrate the dangers of prematurely ending tight monetary policy. Nonetheless, the minutes stated that it will "become appropriate at some point to slow the pace of policy rate increases while assessing the effects of cumulative policy adjustments on economic activity and inflation." The FOMC does anticipate that the economy will grow at a below trend pace over the next few years, with the labor market becoming less tight. The next meeting of the FOMC is scheduled for November 1-2, 2022.

Separately, the U.S. Department of Labor's Bureau of Labor Statistics released data that showed that the pace of inflation is accelerating. The Consumer Price Index rose 0.4 percent in September and 8.2 percent over the past 12 months.

President Signs Joint Consolidation Loan Separation Act Into Law

On Wednesday, President Joe Biden signed **S. 1098, the Joint Consolidation Loan Separation Act**, into law. As previously reported, S. 1098 amends the Higher Education Act to allow borrowers with joint consolidation loans under the Federal Family Education Loan Program to submit an application to the U.S. Department of Education to separate their consolidated loan into two new Direct Consolidation Loans. The bill applies to all joint consolidation loans, but envisions assisting borrowers who are experiencing domestic or economic abuse to apply for their loans to be separated from their partner's loans and have the other borrower be solely responsible for the remaining balance of the loan.

CFPB Issues Annual Report on College Banking Agreements

Today, the Consumer Financial Protection Bureau (CFPB) issued its annual report titled, **College Banking and Credit Card Agreements**, which examines those partnerships between institutions of higher education and financial services providers. This is the twelfth annual report to Congress on college credit cards required under the Credit Card Accountability, Responsibility, and Disclosure Act. In the report, the CFPB raises questions about whether some marketing deals between colleges and financial institutions comply with rules promulgated by the U.S. Department of Education. The report also highlights a lack of transparency in the arrangements schools have made with financial institutions. In conjunction with the release of this report, the Department issued guidance on requirements for college-sponsored banking arrangements. “Many college students trust that schools have their best interests in mind,” CFPB Director Rohit Chopra said in a **press release**. “While colleges have substantial bargaining power to obtain superior terms and pricing for their students, we find that many college-sponsored financial products cost students more than accounts that are readily available on the open market. Today’s report suggests that there is more work to do to ensure that students are not steered into school-endorsed products with junk fees. We will continue to work with the Department of Education to help students find the best possible products.”

Key findings of the report include the following:

- Financial services providers and their partner schools appear to offer and promote more costly products to students than are otherwise available in the market: Students are subject to direct marketing efforts that promote accounts that impose more costs than comparable accounts – even comparable accounts offered by the same financial services provider. Some providers’ agreements with schools allow them charge students five overdraft or NSF penalties, per day, costing $175.
- One entity dominates the market for financial aid disbursements, providing nearly 70 percent of the accounts offered in partnership with schools—and imposes surprise monthly fees.
- Many students are directed to lists of account options that do not appear to meet Department of Education requirements: Under Department regulations, students must be allowed to select the way they receive their financial aid from a neutral list, and cannot be coerced into selecting college-sponsored products under threat that their financial aid disbursements will be delayed if they choose non-sponsored accounts.

- Many agreements between financial institutions and colleges do not appear to be posted prominently as required: Nearly 30 percent of accounts in the CFPB's sample were subject to arrangements in which the financial services provider made payments to the partner school. Schools are required to post on their websites the agreements they have with financial services providers, any compensation exchanged between them, and the average costs paid by students. These disclosures help make the terms of the college-bank relationship transparent, but the CFPB's review found that hundreds of schools did not appear to have posted the disclosures in the public and conspicuous manner required.

U.S. Department of Education News

For today's *Federal Register*, click **here**.
The following announcements were posted to Federal Student Aid's Knowledge Works website:

- **(GEN-22-14) Cash Management – Tier One and Tier Two Arrangements**
- **(CB-22-18) Perkins Loan Program – Federal Perkins Loan Revolving Fund Distribution of Assets Timeline for 2022–23 and Reimbursement for Perkins Loan Service Cancellations**
- **Notice: Application to Participate in Federal Student Financial Aid Programs**

General News

The Federal Reserve and Consumer Financial Protection Bureau **announced** the dollar thresholds used to determine whether certain consumer credit and lease transactions in 2023 are exempt from Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing). Based on the annual percentage increase in the Consumer Price Index as of June 1, 2022, Regulation Z and Regulation M generally will apply to consumer credit transactions and consumer leases of $66,400 or less in 2023. However, private education loans and loans secured by real property, such as mortgages, are subject to Regulation Z regardless of the amount of the loan.

Forbes publishes a column on whether student and parent borrowers should consolidate their student loans to be eligible to receive federal student loan forgiveness.

The Chronicle of Higher Education published an op-ed stating that student loan debt is a

crisis for Black borrowers.

NPR reports on what student and parent borrowers should know about the application for the federal student loan forgiveness plan.

Inside Higher Ed reports that DeVry University is suing the U.S. Department of Education to block it from recouping millions of dollars to repay discharged federal student loan debt.

Bloomberg reports that New York Governor Kathy Hochul signed a new law ending student debt collection fees.

Higher Ed Dive reports that, according to a recent survey, 77 percent of adults think it would be hard to pay for college.

CNBC reports that more than 20 schools now have “no-loan” policies, which means they will meet 100 percent of an undergraduate’s need for financial aid.

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