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NCHER Year-In-Review and Outlook for 2023: Register Today!

On Tuesday, January 10, 2023 from 2:00 to 3:00 pm ET, NCHER will hold a “Year-In-Review and Outlook for 2023” using Zoom. This important webinar will review the policy, political, regulatory, and legal developments impacting the higher education finance community that took place in 2022, and the outlook for 2023. This is a member-only event, which means that you will need to be logged into the NCHER website to register. For more information or to register, click [here](#).

Department of Education Releases Fall 2022 Regulatory Agenda, Indicates Third Negotiated Rulemaking Effort

On Wednesday, the U.S. Department of Education released its [Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions](#) which indicates that the Office of Postsecondary Education and the Office of Federal Student Aid have 18 items in the pre-rule, proposed rule, or final rule stage impacting the federal student loan programs. The following are items of interest to the NCHER membership:

Pre-Rule Stage – 8 Items

- **Federal TRIO Programs:** The Department plans to amend current regulations, which may include technical improvements to programmatic eligibility and operations. The notice of intent to commence a third negotiated rulemaking session will be released in April 2023.
- **Accreditation:** The Department plans to amend current regulations associated with the standards related to the Secretary of Education's recognition of accrediting agencies and accreditation procedures as a component of institutional eligibility for participation in federal student financial aid. The notice of intent to commence negotiated rulemaking will be released in April 2023.
- **State Authorization:** The Department plans to change how colleges must be approved by state regulators in order to receive federal student aid. The notice of intent to commence negotiated rulemaking will be released in April 2023.
- **Return to Title IV:** The Department plans to make changes to the process for how colleges must calculate and return federal student aid when a student withdraws before the end of a term and ease the administrative burden on institutions of higher education. The notice of intent to commence negotiated rulemaking will be released in April 2023.
- **Cash Management:** The Department plans to change federal regulations to ensure that students maintain timely access to student aid disbursed by institutions of higher education. The notice of intent to commence negotiated rulemaking will be released in April 2023.
- **Third-Party Servicers:** The Department plans to amend federal regulations related to existing guidance on third-party servicers, reporting requirements, financial or other compliance requirements, and past performance requirements as a

component of ongoing institutional eligibility for participation in federal student financial aid. The notice of intent to commence negotiated rulemaking will be released in April 2023.

- **Improving Use of Deferments and Forbearances:** The Department plans to make changes to the standards and requirements for issuing forbearance and deferments, particularly in related to income -driven repayment. The notice of intent to commence negotiated rulemaking will be released in April 2023.
- **Distance Education:** The Department plans to propose to amend the definition of distance education. The notice of intent to commence negotiated rulemaking will be released in April 2023.

Proposed Rule Stage – 9 Items

Ability to Benefit: The Department intends to issue proposed regulations to provide clarity to states and institutions of higher education, including how to calculate the success rate of institutions with the intention of facilitating the implementation of state-defined processes and how to document and verify when an institution offers an eligible career pathway program. The Notice of Proposed Rulemaking (NPRM) is expected to be released in April 2023.

Gainful Employment: The Department intends to issue proposed regulations that determine whether postsecondary educational programs prepare students for gainful employment in recognized occupations and conditions under which institutions and programs remain eligible for federal student aid. The NPRM is expected to be released in April 2023.

Improving Income Driven Repayment: The Department intends to propose regulations governing Income-Contingent Repayment plans by amending the Revised Pay As You Earn Repayment Plan and to restructure and rename the repayment plan authorized under the Federal Direct Loan Program. The Unified Agenda says that the NPRM was expected in December 2022, which has yet to be released.

Other Areas: The Department intends to release proposed regulations on factors of financial responsibility, standards of administrative capability, and certification procedures. The NPRM is expected to be released in April 2023.

Final Rule Stage – 1 Item

PSLF: The Department plans to issue a final rule responding to comments received around changes to the definition of a qualifying employer for purposes of the Public Service Loan Forgiveness program, including whether any for-profit employers should be considered a qualifying employer. The final rule is anticipated in January 2023.

The regulatory agency also says that the Department intends to propose improvements to its debt collection practices governed by the Higher Education Act and the Debt Collection Improvement Act. The NPRM will be released in March 2023.

House Reconvenes for Third Day of Speaker Votes, Negotiations Continue

Today, the U.S. House of Representatives convened for a third day of voting on Speaker and who will lead Republicans in the lower chamber. Today, the House conducted four ballots (the 7th, 8th, 9th, and 10th ballots since beginning the process) where the results were the same: Rep. Kevin McCarthy (R-CA) garnered 201 votes, Rep. Hakeem Jeffries (D-NY) garnered 212 votes, other candidates garnering 20 votes, and one member voting present. The 10th ballot was the first time that such a ballot was required since before the Civil War. The House plans to adjourn for the day following the 10th vote.

According to multiple news outlets, the Republican leadership has been engaged in negotiations with the 20 holdouts in an effort to reach an agreement. “Things are coming together in a very healthy way,” Rep. Patrick McHenry (R-NC), a McCarthy supporter said. “I feel very favorable about how this evening may come together. I think the hope is we have an adjournment here after this vote series and that way people can talk and work through the contours of this.” In negotiations over the last 24 hours, Rep. McCarthy has agreed to amend the House Rules Package to allow a single member to make a motion to vacate the Speaker’s Chair as opposed to five members, to appoint additional members of the House Freedom Caucus to the House Rules Committee that sets debate and terms for legislation, and to provide for open rules for the 12 individual appropriations bills to allow amendments.

For additional coverage, see the following articles:

[New day, similar result: No speaker yet - Roll Call](#)

[House GOP holds breath for elusive speaker deal as it heads into 10th vote - POLITICO](#)

[House Speaker election coverage: McCarthy detractors unmoved on historic 10th ballot but tout progress in talks | The Hill](#)

[GOP discusses new concessions in behind-the-scenes talks on making McCarthy Speaker | The Hill](#)

[Democratic leaders urging rank-and-file to remain in Washington to vote against McCarthy | The Hill](#)

Biden Administration Files Brief on Federal Student Loan Forgiveness Program With Supreme Court

Yesterday, the Biden Administration filed its [brief](#) in *Biden et al v. State of Nebraska et al* with the U.S. Supreme Court where it defended the U.S. Department of Education's federal student loan forgiveness program announced in August 2022. As previously reported, the Supreme Court will hear two cases on February 28, 2023 – the first case was brought by six Republican-led states challenging the constitutionality of the program while the second case was brought by Job Creators Network Foundation, a conservative advocacy group in Texas, on behalf of student loan borrowers who were partially or fully excluded from the program. The U.S. Department of Justice's (DOJ) brief attempts to address two questions raised by the court: Whether respondents have Article III standing and Whether the Secretary of Education's student loan plan exceeds his statutory authority, is arbitrary and capricious, or was adopted in a procedurally improper manner.

DOJ's brief is aligned with arguments that the agency has been making in lower courts for months that the Supreme Court should throw out the case as the six states and Texas borrowers do not have legal standing to bring the case and that the administration has the authority to cancel large amounts of debt under the "plain text" of the HEROES Act, which gives the Department the power to waive laws that would normally govern federal student loans during a national emergency. In the brief, DOJ argues that the federal student loan forgiveness plan is a logical end to the unprecedented payment pause, writing, "that ending that pause without providing some additional relief for lower-income borrowers would cause delinquency and default rates to spike above pre-pandemic levels. This Court should not compel that damaging and destabilizing result." The agency further argues that the state's attempt to exclude federal student loan forgiveness from the HEROES Act contradicts the law's text, the major questions doctrine provides no reason to depart from the statutory text, the plan is reasonable and

reasonably explained, and the Secretary's action was procedurally proper.

The states must file their response to the Biden Administration's brief on or before Friday, January 27, 2023, and DOJ must file its reply brief on or before Wednesday, February 15, 2023.

For additional coverage, see the following articles:

[Biden officials begin battle at Supreme Court for student debt relief | The Hill](#)

[US makes its case for legality of Biden student debt program - Roll Call](#)

[Biden launches defense of student debt relief at Supreme Court - POLITICO](#)

New Arizona AG Will Reevaluate Case Against Federal Student Loan Forgiveness Program

Earlier this week, newly elected Arizona Attorney General (AG) Kris Mayes announced that he will reevaluate the state's lawsuit against the U.S. Department of Education's federal student loan forgiveness program. The lawsuit, separate from the case brought by six Republican-led states, was brought when former AG Mark Brnovich held the seat and challenged the constitutionality of the program. "Our team will be reviewing every case and meeting with attorneys to get up to speed on all ongoing legal matters," Kim Martin, a spokesperson for AG Mayes said. Last week, prior to leaving office, AG Brnovich appointed an outside law firm to continue representing the state of Arizona in the case. The lawsuit has been moving slower than other cases pending before the U.S. Supreme Court as the judge hearing the case agreed to delay some deadlines and wait for other legal challenges on the loan forgiveness program to play out.

U.S. Department of Education News

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

The following announcements were posted to the Federal Student Aid's Knowledge Center Website:

- [Comment Request: Student Assistance General Provisions-Subpart J-Approval of Independently Administered Tests](#)

- [Comment Request: Foreign Gifts and Contracts Disclosures](#)
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Member News



The Boards of Directors of the Kentucky Higher Education Assistance Authority (KHEAA) and Kentucky Higher Education Student Loan Corporation (KHESLC) recently [announced](#) that they are seeking a dynamic leader to fill the position of Chief Executive Officer/Executive Director. KHEAA/KHESLC are sister

organizations created by state statute, whose joint mission is to enable Kentuckians to achieve their education goals beyond high school. The CEO/Executive Director will serve as one of the Commonwealth's leading policy advocates for financial access to and successful completion of postsecondary education, representing the interests of prospective and enrolled Kentucky students and their families. To apply, submit a cover letter and resume via email in PDF format to ceosearch@kheaa.com by 4:30 PM EST Tuesday, January 31, 2023. For more information, click [here](#).

General News

[Bloomberg](#) reports on key upcoming dates for federal student loan borrowers to know.

[Business Insider](#) previews a new report from the Federal Reserve Bank of New York that says resuming federal student loan payments without the President's loan forgiveness program could be especially harmful to borrowers with auto and credit card debt.

[Forbes](#) reports on last month's update from the U.S. Department of Education where it discussed guidance on the Income Driven Repayment Account Adjustment.

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