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NCHER

DAILY BRIEFING

Tuesday, June 29, 2021

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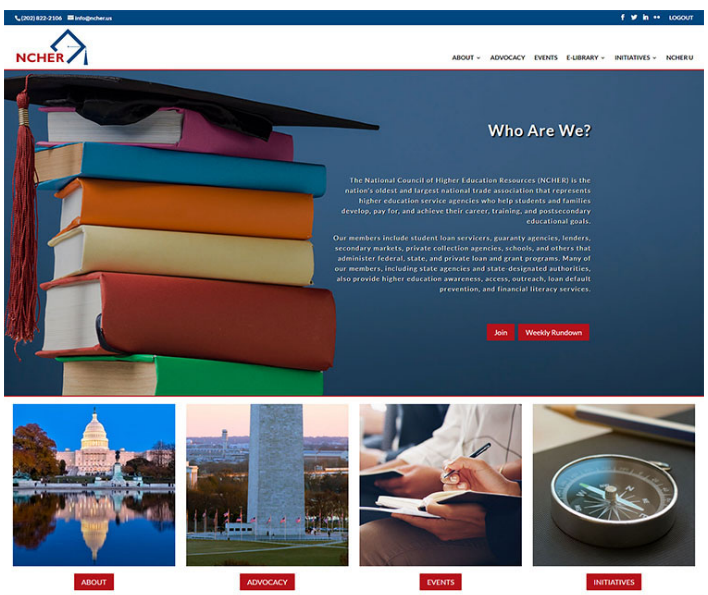
NCHER Website to Get Upgrade Later This Week, New User Registration Required



The NCHER website is scheduled to receive an upgrade later this week and is likely to be unavailable on July 1 and 2 and over the Independence Day Holiday. While the landing page of the website will remain the same, the rest of the website will have a more streamlined look and feel in order give you, our members, a better experience. The E-library will also have a new look; some of the older information has been archived to the cloud storage servers (which can be accessed, if needed) while preserving key historical information from our storied history and making room for the road ahead.

As part of the upgrading process, NCHER will be moving to new web hosting services. As such, all members will be required to re-register on the new website to maintain access to restricted areas, reserved just for members, and to sign up for the *NCHER Daily Briefing*. We will email you more information later this week, containing specific instructions about the registration process for the new website. Thank you for your patience as we move to a new and better website!

House Financial Services Committee Announces July Schedule

House Financial Services Committee Chairwoman Maxine Waters (D-CA) announced the hearing and markup schedule for July. The following events may be of interest to the NCHER membership:

- Wednesday, July 14 at 12:00 p.m. ET: The full committee will convene for a virtual hearing entitled, "Monetary Policy and the State of the Economy."
- Wednesday, July 21 at 10:00 a.m. ET: The Subcommittee on Consumer Protection and Financial Institutions will convene for an in-person hearing entitled, "Banking the Unbanked: Exploring Private and Public Efforts to Expand Access to the Financial System."
- Wednesday, July 28 at 10:00 a.m. ET: The full committee will convene for an in-person markup.

Department of Education Urged to Delay DeVos-Era Higher Education Rules

Earlier this week, several consumer groups urged the U.S. Department of Education to delay a series of federal regulations finalized last fall by former Education Secretary Betsy DeVos, which are scheduled to go into effect on July 1. The rules are aimed at easing federal requirements for online colleges, but they also modify how the Department conducts oversight over all colleges and universities that want to receive federal student loans and Pell Grants. In particular, a key provision requires the Department to automatically approve colleges for federal student aid if they have been operating on a probationary month-to-month status for more than a year without a final decision from regulators. The Department has said that it plans to eventually revamp how the agency approves colleges for federal financial aid. But progressives are urging the Biden Administration to delay the DeVos-era regulations from going into effect on Thursday. According to *Politico*, a Department spokesperson recently confirmed that the agency would interpret the automatic recertification provision as a forward-looking requirement; in other words, the Biden Administration is not planning to immediately recertify the dozens of colleges that have been operating on a month-to-month basis for more than a year.

U.S. Supreme Court Declines to Hear Student Loan Bankruptcy Case

Yesterday, the U.S. Supreme Court declined to hear the case, *Conti v. Arrowood Indemnity Co.,* where Kathryn Conti was trying to discharge her private student loans in bankruptcy. The case was seeking to overturn a ruling establishing a presumption that private student loans cannot be eliminated in bankruptcy, and leaves the current student loan bankruptcy standard in place for the time being. For background, Ms. Conti took out private student loans from Citibank totaling over $76,000. The loan application identified the debt as educational debt for "students attending four-year colleges and universities," and the promissory notes mandated that "the proceeds of this loan are to be used for specific educational expenses." The loans were disbursed directly to the university, and none of the disbursements exceeded the total cost of attendance. Ms. Conti tried to get her five private student loans discharged in a Chapter 7 bankruptcy, arguing they were not "qualified education loans." Under the current bankruptcy code, "qualified education loans" can only be eliminated in bankruptcy if the debtor can prove "undue hardship." The bankruptcy court rejected Ms. Conti's hardship arguments, and a federal district court and the U.S. Court of Appeals for the Sixth Circuit affirmed this decision. The Sixth Circuit concluded that the plain language of the loan application and promissory notes clearly showed that these were educational loans and, thus, were not dischargeable in bankruptcy, absent a showing of undue hardship. For more coverage of the case, see this article from *Forbes*.

CFPB Issues Supervisory Highlights on Debt Collection, Private Education Loan Origination, and Student Loan Servicing

Today, the Consumer Financial Protection Bureau (CFPB) issued its Supervisory Highlights for Summer 2020. The report highlights prior supervisory findings that led to public enforcement actions in 2020 resulting in more than $124 million in consumer remediation and civil money penalties, and highlights legal violations identified by the Bureau's examinations in 2020. "Today's release of Supervisory Highlights reinforces the importance of the Bureau's supervisory work, including during the COVID-19 pandemic, to find and correct systemic problems that hurt consumers," said CFPB Acting Director Dave Uejio. "The actions we took in 2020 mitigated some of that harm, but consumers are still struggling, and we will stay vigilant." The report includes the following items that may be of interest to the NCHER membership:

- Debt Collection: The report found that some large participant debt collectors had placed prohibited calls to consumer's workplaces, communicated with third parties, failed to cease communication upon written request or refusal to pay, and harassed consumers regarding their inability to pay. The participants also communicated or threatened to communicate false credit information, made false representations or deceptive means of collections, made unlawful initiation of administrative wage garnishment during the consolidation process, and failed to send complete validation notices. Each of the instances were in violation of the Fair Debt Collection Practices Act.
- Private Education Loan Origination: The report found that some private education loan entities engaged in deceptive marketing by advertising rates "as low as X percent", disclosed certain conditions to obtain that rate, and then omitted that a borrower's rate would depend on their creditworthiness.
- Student Loan Servicing: The report found that federal student loan servicers misrepresented the eligibility of Federal Family Education Loan Program (FFELP) loans for Public Service Loan Forgiveness (PSLF). In particular, the servicers should have told consumers that they could qualify for PSLF by consolidating their loans into the Direct Loan program. The servicers also misrepresented the effect of employer certification forms on FFELP loans. The report says that servicers also misrepresented employer types eligible for PSLF by only telling borrowers that nonprofit employment qualified for loan forgiveness, and did not mention that government employees are eligible for forgiveness. Finally, the report found that, at some servicers, certain groups of borrowers were automatically enrolled in natural disaster forbearances without a specific request from the consumer; that some servicers did not waive or refund overcharges that they assessed after loan transfers; and some servicers failed to honor payment allocation instructions by borrowers.

Oregon Legislature Passes Student Loan Bill of Rights

Last week, the Oregon Legislature completed action on SB 485, a bill that requires student loan servicers to be licensed and imposes new requirements on servicers to operate in the state. It also requires the Director of the Department of Consumer and Business Services to appoint a Student Loan Ombudsman. The Oregon Senate passed the final bill by a vote of 22-7 while the House passed the legislation by a vote of 53-2.

Under the bill, student loan servicing is defined broadly, and includes maintaining account records for a student loan, communicating with a borrower on behalf of a lender, and interacting with a student loan borrower to prevent loan default. Guaranty agencies are exempt to the extent that they engage in default aversion. Similar to other states, the legislation exempts financial institutions and organizations under contract with the U.S. Department of Education from having to obtain a license, though they must pay the licensing fee set by the Director. The bill requires federal and private student loan servicers to maintain sufficient liquidity, operating reserves, and tangible net worth set by the Director. If the servicer fails to meet those standards, the Director may take possession of the servicer's assets. Like other state laws, the bill contains a list prohibited practices, including employing any scheme to defraud another person, knowingly making an untrue statement of a material fact, and knowingly or recklessly misapplying payments. The bill also requires servicers to credit payments within one day of receipt, to maintain adequate records, and to promptly correct errors. Following an expected signature by the Governor, the bill will become operative on July 1, 2022.

Third Way, New America Release Report on COVID-19s Impact on Current and Future College Students

New America and Third Way recently partnered with Global Strategy Group to commission three national polls on the impact of COVID-19 on current and future college students. The surveys conducted in August 2020, December 2020, and May 2021 show that college students believe the worst of the pandemic is over. This optimism about the pandemic, however, does not translate into increased positivity towards higher education. According to the poll, students feel mixed about whether college is worth the cost anymore, even though they believe their institutions handled the pandemic well. The biggest concerns raised by students centered on the quality of online education, college cost, and how a degree will prepare them for a new economy. Of the 1,002 college students surveyed between April 29 and May 13, 65 percent said that higher education was not worth the cost anymore, up from 57 percent in December and 49 percent in August 2020. Most students raised concerns that their degree was less valuable because it was online, and they also said that the quality of education they are receiving is worse now that it is partially or entirely online. Only 26 percent of respondents believe the nation’s economy is getting better, while 33 percent say it is getting worse. For this reason, students expect their institutions and policymakers to help make higher education more affordable and set better accountability standards. For more on the survey, see this article from *Higher Ed Dive*.

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:

- Notification of Campus-Based Funding for the 2021–22 Award Year (EA ID: CB-21-07)
- 2022–2023 CPS Test System User Guide (EA ID: APP-21-06)

Member News

ConServe announced that it was selected as one of the 2021 Best Places to Work in Collections by *insideARM* and Best Companies Group. This is the seventh time that ConServe has been recognized by industry excellence programs. “We are honored to be named one of the Best Places to Work in Collections,” said Richard Klein, President. “This industry validation emphasizes the extent to which our team of committed employees truly believes we are doing the right thing, at the right time, the right way.” Our employees are our most valuable asset and we recruit, hire, develop, and promote the very best. We are thrilled to be recognized for a seventh time.”

General News

American Banker reports that federal student loan servicers fear a one-two punch from the Consumer Financial Protection Bureau and the U.S. Department of Education, and are bracing for tougher supervision and more monetary penalties from federal agencies as the Biden Administration tackles the thorny issue of student loan debt.

The Pew Charitable Trusts publishes a blog post reviewing how student loan borrowers will fare after the COVID-19 pandemic, noting that increased repayment challenges could outlast the current economic recession.

Inside Higher Ed reports that, as college students across the country face food and housing insecurity, Congressional Democrats are hoping to pass legislation that can help.

The Chronicle of Higher Education continues to update its list of colleges and universities that will require students or employees to be vaccinated against COVID-19.

Higher Ed Dive continues its review of trends in college consolidation as it tracks major closings, mergers, and acquisitions among public and private nonprofit institutions from 2016 to the present.

Newsweek includes an op-ed from Heartland Institute Editorial Director Justin Haskins who argues that Democrats have found a backdoor path to student debt cancellation that bypasses debate altogether: simply refusing to make borrowers pay back their loans.

Essence includes an op-ed by author Michael Arceneaux who argues that President Joe Biden promised student loan debt relief and it is time to pay up.

Forbes reviews how student loans can affect your ability to buy a home.

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