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**The Federal Update for June 2, 2023**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: June 2, 2023

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## Legislation and Guidance

### Congress Sends Compromise Bill to Increase Debt Limit to President

The House passed bipartisan legislation on Wednesday by a 314-117 vote to raise the debt limit after President Biden and Congressional leaders reached a deal over Memorial Day weekend. The Senate also approved the bill on a 63-36 vote Thursday night after voting on several amendments – all of which failed.

The legislation, named the Fiscal Responsibility Act of 2023, suspends the debt ceiling until January 2025 and caps fiscal year 2024 spending levels for non-defense programs, including funding for the U.S. Department of Education (ED), at approximately FY 2023 levels. The bill also includes a provision encouraging Congress to pass FY 2024 appropriations timely by imposing a one percent cut to any continuing resolutions that extend funding past January 1, 2024. Additionally, the bill allows an increase of one percent for non-defense programs in FY 2025, which is the fiscal year that begins on October 1, 2024, compared to the FY 2024 non-defense spending level authorized by the bill.

Further, the bill will rescind $391 million in American Rescue Plan education relief funds, including funds from the Education Stabilization Fund. These rescissions will reportedly be made only to funding that has not been obligated by ED to States, districts, or institutions of higher education, including funding under the Higher Education Emergency Relief Fund that was not claimed by eligible institutions, as opposed to funding that has already been allocated to grantees. The legislation also codifies into law the administration’s current plan to resume student loan payments and interest collection after August 30, prohibiting President Biden from issuing another extension. Other provisions include rescission of funding from the Internal Revenue Service and changes to the eligibility requirements for the Supplemental Nutrition Assistance Program and the Temporary Assistance for Needy Families Program.

The President is expected to sign the bill before June 5 – the date the U.S. Treasury has estimated the United States will breach the current debt limit. With overall spending levels for FY 2024, which begins on October 1, determined by the debt limit legislation, Congress will now turn its attention back to the regular appropriations process over the coming weeks.

Resources:

Daniella Diaz, Katherine Tully-McManus, “Senate averts default, sends debt bill to Biden’s desk,” *Politico*, June 1, 2023.

Author: KSC

### Senate Approves CRA Resolution on Student Loans

On Thursday the Senate passed a resolution by a 52-46 vote, signaling disapproval of the President’s student debt forgiveness plan. The resolution, filed under the Congressional Review Act (CRA), would strike the action if signed by the President, and would prohibit the administration from ever taking “substantially similar” action based in the same legislative text. However, the White House has said that the President will veto the measure.

The resolution was filed soon after lawmakers obtained a memo from the Congressionally-affiliated Government Accountability Office (GAO) declaring it a regulatory action subject to the CRA. But such resolutions are most effective in the period between administrations, when an incoming President may be willing to undo their predecessor’s actions.

The administration is also awaiting a decision from the U.S. Supreme Court on the legality of the student loan forgiveness. All loan amounts not forgiven will see payments resume after August 30 following inclusion of that requirement in the debt ceiling deal.

Author: JCM

### ED Says Title IX Rule Will be Delayed Until October

In a blog post published late last week, the U.S. Department of Education (ED) said that it would not publish final rules on implementing Title IX of the Education Amendments of 1972 until later this year.

In the Fall 2022 Regulatory Agenda, which was issued in early 2023, ED said that it planned to publish the final rule in May. However, the agency now says that due to the large number of comments it received – over 240,000 for the draft rule on discrimination in educational programs or activities and more than 150,000 on the proposed athletics rule – it needs more time to review and respond to public concerns. It will update the Regulatory Agenda to reflect an estimated publication date of October 2023 for both rules.

Though ED has the ability to make these rules effective immediately, a publication date of fall 2023 likely means that the agency intends to make them effective for the 2024-25 school year, allowing time to develop compliant policies in the case of the athletics rule, and to conduct the appropriate training that would be required if the final educational programs rule keeps the proposed requirements.

A number of interest groups and lawmakers complained to ED that the draft athletics rule lacked clear benchmarks for compliance, putting the burden of drafting policies and defending them against legal challenges on States and districts. And both rules are expected to define the concept of “sex” expansively, creating conflicts with State laws that restrict the participation of transgender students in athletics or the use of bathroom facilities that align with their gender identity. Litigation on both of these rules is highly likely in the coming years.

Author: JCM

### OCR Releases Resource on Nondiscrimination in Student Discipline

Last month, the U.S. Department of Education Office for Civil Rights (ED OCR) and the U.S. Department of Justice's Civil Rights Division (DOJ) jointly released a document, Resource on Confronting Racial Discrimination in Student Discipline.

ED OCR and DOJ indicate that the resource demonstrates their joint commitment to protect students from discriminatory school discipline based on race, color, or national origin. The resource states that there are significant racial disparities in the application of discipline, which push students out of the classroom and keep them from opportunities for success.

The resource details 14 investigations in school districts in Alabama, Arizona, California, Delaware, Maryland, Minnesota, North Carolina, Ohio, Oklahoma, and Utah. The investigations involved discrimination by schools against Black, Latino, and Native American students. The schools used suspensions, expulsions, and even arrests and referrals to law enforcement to discipline students. Assistant Secretary for Civil Rights Catherine Lhamon noted that these investigations demonstrate how students have experienced and continue to “experience discrimination based on multiple facets of their identities.”

Additionally, each of the investigations in the resource includes a section on how the school district addressed areas of noncompliance and committed to changes in their discipline policies. ED OCR and DOJ encourage school districts to use these demonstrations to confront discrimination and proactively improve school discipline.

ED’s Office of Elementary and Secondary Education (OESE) also separately released a series of fact sheets, which describe how those in school leadership and others involved in school communities can support students in their “social, emotional, behavioral, and academic well-being and success.” Links to those fact sheets can be viewed at the press release link below. OESE Technical Assistance Centers will also hold webinars on each of the fact sheets.

[The full Resource on Confronting Racial Discrimination in Student Discipline can be viewed here.](https://www2.ed.gov/about/offices/list/ocr/docs/tvi-student-discipline-resource-202305.pdf?source=email) [A press release announcing the Resource can be viewed here.](https://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-resource-confronting-racial-discrimination-student-discipline)

Author: BNT

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