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# **The Federal Update for October 13, 2023**

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

Re: Federal Update

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## Legislation and Guidance

### House Still Without Speaker, Legislative Agenda on Hold

Representative Steve Scalise (R-LA), who members of the House Republican conference selected as their nominee for Speaker by a margin of one vote earlier this week, pulled out of the race Thursday night. The loss of Scalise as a potential candidate sends the House back into uncertainty and previews a potentially tricky series of votes as the House of Representatives attempts to elect a new leader.

Scalise bested rival Jim Jordan (R-OH) for the official nomination, but Jordan and others can still declare their candidacy as the election progresses. The Democratic caucus has nominated Hakeem Jeffries (D-NY) for the role, and former Speaker Kevin McCarthy (R-CA) has said he might consider running for reelection despite the successful vote to unseat him. Representative Austin Scott (R-GA) also announced his candidacy for the role on Friday. A candidate for Speaker needs a majority of votes in the House and with a number of conservatives pledging to vote against Scalise and McCarthy, there does not seem to be any candidate with a clear path to the Speakership at this point in time. Scalise also faces pushback from Democrats, who note he has previously spoken to a meeting of a white supremacist group, and that he once described himself as “David Duke without the baggage,” referring to the former Ku Klux Klan leader.

While the House chooses its next Speaker, the temporary appropriations bill that keeps the federal government running is inching toward expiration. The continuing resolution (CR) passed late on September 30th will expire November 17th, meaning the government could still shut down without further Congressional action. Lawmakers have also said they want to pass more aid to Israel, and the expiration of the 2018 Farm Bill at the end of September could start to have consequences unless Congress passes a stopgap measure. But the general consensus in both the House and Senate is that the acting speaker pro tempore Patrick McHenry (R-NC) has limited authority beyond the responsibility to run an election for the next Speaker, so further action on those items will have to wait.

Author: JCM

### ED Negotiated Rulemaking on Student Loans Kicks Off

The U.S. Department of Education (ED) negotiated rulemaking process to craft regulations under Title IV of the Higher Education Act (HEA) kicked off this week, with the first of three sessions taking place on Tuesday and Wednesday.

Negotiated rulemaking is a required process to modify Title IV requirements under the HEA during which ED convenes a committee of stakeholders to draft regulations under topics determined by ED. ED may provide draft language as a starting point for negotiations, and all negotiators must agree on language for it to move forward as a proposed rule. If a negotiated rulemaking committee fails to reach agreement, ED may publish its own proposed regulations on the given topic.

ED asked the committee that was convened this week to consider options for loan forgiveness for targeted groups of borrowers, such as borrowers who have been in repayment for extended periods of time or whose loan balances are now higher than the original loan amount, among others. This is the administration’s latest move to provide loan relief to at least some borrowers following the U.S. Supreme Court’s decision earlier this year that President Biden’s broader debt relief proposal could not move forward. The administration is seeking to utilize ED’s limited student loan waiver authority under the HEA, according to Undersecretary of Education James Kvaal, who gave opening remarks at the session earlier this week. In addition, ED’s federal negotiator on the committee stated that ED is not seeking “broad based debt cancellation where we are going to wipe off debt in its entirety.”

During the first session, negotiators worked through the questions posed by ED in an issue paper, including what changes would help the various groups of borrowers ED is hoping to target with relief, and heard some public comments on borrowers’ own experiences and challenges with federal student loan debt. ED plans to provide proposed regulatory text ahead of the next rulemaking session in November for the negotiators to consider. A third and final session will be held in December.

Resources:

Michael Stratford, “Education Department seeks ‘fair and lawful’ approach to canceling student debt, official says,” *Politico*, October 10, 2023.

Jeremy Bauer-Wolf, “Negotiated rulemaking: Decoding the Education Department’s policymaking process,” *Higher Ed Dive*, October 4, 2023.

Author: KSC

## News

### Foxx Asks for Action Plan on Student Loan Scams

This week, House Education and Workforce Committee Chair Virginia Foxx (R-NC) sent a letter to Secretary of Education Miguel Cardona urging action on protecting student loan borrowers from scams.

In the letter, Foxx writes that the student loan system has become more complicated over the years and makes borrowers more vulnerable to scams. Many borrowers don’t know that they can contact and work with the system free of charge, she says, and scam companies prey on their confusion to run aggressive schemes. Foxx notes that these companies often call borrowers and non-borrowers alike claiming that they work on behalf of ED or specifically identify themselves as the “Student Loan Debt Department.”

Foxx says that the companies then use scare tactics to pressure borrowers to pay a fee, stating that the borrower must work with them to pay off their loans. To deceive borrowers, some companies are even telling borrowers that they must file for student loan forgiveness with their company immediately or miss out. These tactics are reinforced by the complexity of the student loan system, she writes.

While Foxx notes that ED has provided resources and articles addressing student loan scams on studentaid.gov, she urges ED to work collaboratively with her to continue addressing these scams. According to the letter, Foxx and Secretary Cardona recently spoke about the issue of student loan scams and agreed that action must be taken.

Foxx asked Secretary Cardona to provide an outline of actions ED is taking to address these student loan scams. She also asked for ED to publish guidance, as they are required to under the *Stop Student Debt Relief Scams Act of 2019.*

A spokesperson from ED said that they appreciate Foxx’s attention to the issue and agreed that since the federal student loan payment pause ended, scam companies may be trying to contact vulnerable borrowers. The spokesperson noted that they will review the letter when it is received and that the administration “continues to take aggressive action every day to protect borrowers, ensure the integrity of the federal student aid programs and safeguard taxpayer dollars.”

[The letter can be viewed here.](https://edworkforce.house.gov/uploadedfiles/ltr_foxx_to_cardona_oct_10_2023.pdf)

Resources:

Bianca Quilantan, “Foxx wants to fight student loan debt scammers with Cardona,” *Politico*, October 10, 2023.

Author: BNT

*The Bruman Group, PLLC will be hosting a virtual training on October 19 to discuss the proposed changes to the Uniform Grants Guidance. Additional information and registration is available here:* [*www.bruman.com/training-and-recordings/*](http://www.bruman.com/training-and-recordings/)*.*

***The Federal Update has been prepared to inform The Bruman Group, PLLC’s legislative clients of recent events in federal education legislation and/or administrative law. It is not intended as legal advice, should not serve as the basis for decision-making in specific situations, and does not create an attorney-client relationship between The Bruman Group, PLLC and the reader.***

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