

# The Federal Update for January 6, 2023

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Re: Federal Update

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## Legislation and Guidance

### Congress Passes $1.7 Trillion Spending Bill

Following weeks of challenging negotiations at the end of 2022, Congress passed a final spending bill late last month that provides funding for fiscal year (FY) 2023. After extending the short-term continuing resolution the federal government had been operating under since September by one week, until December 23, due to slow negotiations, lawmakers were able to reach an agreement on an omnibus bill that includes funding for all federal agencies before adjourning for the remainder of 2022.

The FY 2023 spending bill provides $79.2 billion for the U.S. Department of Education—an increase of approximately $4 billion from FY 2022. Most education programs received a five to ten percent boost in funding compared to the prior year, with Title I grants under the Elementary and Secondary Education Act (ESEA), the minimum Pell Grant amount, and State grants under the Individuals with Disabilities Education Act (IDEA) seeing the largest increases. In addition, the bill provides a range of “Community Project Spending” items for education-related initiatives, known colloquially as “earmarks.” The FY 2023 omnibus marks the second year earmarks have returned to the appropriations process after a ban several years ago. The funding provided in the FY 2023 omnibus is the funding that education grantees will begin receiving on July 1 of this year.

The funding levels and increases under the FY 2023 appropriations legislation for major education programs are included below:

| Program | 2022 | 2023 President’s proposed | 2023 Final | Percent Change vs. 2022 |
| --- | --- | --- | --- | --- |
| Title I | $18,230 | $37,281 | $19,088 | 4.7% |
| Title II | $2,170 | $2,149 | $2,190 | 0.9% |
| 21st Century | $1,290 | $1,310 | $1,330 | 3.1% |
| Title IV-A/SSAE | $1,280 | $1,220 | $1,380 | 7.8% |
| IDEA Part B | $13,344 | $16,259 | $14,194 | 6.4% |
| CTE State Grants | $1,380 | $1,355 | $1,430 | 3.6% |
| AEFLA | $704 | $739 | $729 | 3.6% |
| CCDBG | $6,165 | $7,562 | $8,021 | 30.1% |

Note: Funding amounts are provided in thousands of dollars

As the 118th Congress convenes, lawmakers will be turning back to appropriations soon after the President releases his FY 2024 budget request, which typically occurs in March.

Author: KSC

### New Congress Off to a Rocky Start

Lawmakers arrived in D.C. this week for the beginning of the 118th Congress. While in the Senate the beginning of the new session went fairly smoothly—with the swearing-in of new senators by the Vice President and some brief organizational work before the chamber left for a recess—the beginning of the session for the House was plagued by division in the new governing party.

Though the Republican caucus chose Kevin McCarthy (R-CA) as their nominee for Speaker late last year, McCarthy failed to get a majority of those present—required to take the position—in multiple rounds of votes this week. Attempts to compromise with the conservative House Freedom Caucus did not yield an increase in his margin, with Democrats holding strong to their nominee, Representative Hakeem Jeffries (D-NY), who will be the House Minority Leader.

In further negotiations, the holdouts told McCarthy that they wanted more concessions within the House rules for the 118th Congress, including lowering the threshold for calling a vote of no confidence in the Speaker—the procedural move that cost former Representatives John Boehner (R-OH) and Paul Ryan (R-OH) the job. Also on the table are more power to subpoena or control the salaries of administration employees, a promise to oppose debt ceiling increases, and more Committee Chairmanships for themselves. But it is not clear that will be enough to win McCarthy the position, and there is no other clear challenger on the Republican side.

The Speaker must be elected before the members-elect are sworn in, and before rules are adopted, making this election a non-negotiable step. Votes on rules for the House will also be difficult as members try to insert other new provisions like those proposed that would eliminate the Congressional staff union and to require appropriations bills to be considered individually (not in omnibus form) and open to any and all amendments. With leadership positions still up in the air and with Committee Chairmanships being used as bargaining tools, the regular administrative and organizational work of the House will have to wait. The division is also a bad sign for those lawmakers hoping to move legislation in the House this Congress, as it seems clear that the narrow margin will provide leverage to some holdouts to negotiate on any legislation—including items like appropriations and the debt ceiling.

Lawmakers were advised to make themselves available in Washington through the weekend. With the expiration of the rules from the 118th Congress, proxy voting is no longer available to lawmakers in the House, for which they will have to be on the floor in-person to be counted.

Author: JCM

### OCR Issues Guidance on Protecting Students Based on Ethnicity and Ancestry

The U.S. Department of Education’s Office for Civil Rights (OCR) issued a fact sheet this week on the prohibition on discrimination based on “shared ancestry or ethnic characteristics.” The fact sheet is a response to increased antisemitic graffiti and threats against Jewish schools and places of worship but broadly describes ways the protections extend to students who are—or who are perceived as—Jewish, Christian, Muslim, Sikh, Hindu, or Buddhist, among others. An expected regulation on the same item has been delayed by more than a year.

The fact sheet lists examples of circumstances which could raise concerns about discrimination under Title VI of the Civil Rights Act of 1964, including examples of specific scenarios that could be discriminatory. It also notes that allegations of discrimination based solely on religion—rather than stereotypes, appearance, or ethnic characteristics—are handled by the U.S. Department of Justice.

“The rise in reports of anti-Semitic incidents, including at schools, underscores the critical importance of addressing discrimination based on shared ancestry or ethnic characteristics,” Assistant Secretary for Civil Rights Catherine Lhamon said in a letter accompanying the release. “Each of us has a role to play in protecting students from discrimination based on shared ancestry or ethnic characteristics.”

The [fact sheet is available here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf?source=email).

Author: JCM

## News

### ED Releases Semi-Annual Regulatory Agenda with Focus on Higher Ed

This week, the U.S. Department of Education (ED) released its regulatory agenda, which is updated twice per year. The agenda includes a list of proposed regulatory actions for agencies for the coming months, including for ED. ED plans to hold a series negotiated-rulemaking sessions in April to consider new rules regarding a range of higher education and student loan topics. The agenda represents the Biden administration’s continued focus on postsecondary education, especially for-profit colleges.

ED had previously announced a plan to address Federal TRIO Programs, a set of eight programs designed to assist low-income and disadvantaged students in preparation for post-secondary education. The updated agenda includes additional higher education items.

ED indicates that it would address the oversight of third-party servicers, including online program managers who are hired by colleges to manage online programs. ED also plans to redefine what is considered “distance education.”

Further, ED will consider changes to accreditation and State authorization for federal student aid and plans to adjust the requirements that college accreditors must meet in order to be recognized by ED. The administration also plans to issue regulations on the procedures that colleges must follow to receive federal student aid. The administration would also like to change the process by which colleges are approved by State regulators to receive aid.

The administration will take action related to student loans and cash management as well. ED wants to modify the forbearance standards for federal student loan borrowers and create new rules to ensure students receive timely disbursements from colleges. Additionally, ED plans to review the “Return to Title IV” process, which involves the return of federal funds when a student withdraws. College administrators have argued that the process is complicated and burdensome.

In addition to the higher education-specific regulations that ED intends to take action on this year, ED plans to update the Education Department General Administrative Regulations (EDGAR) to reflect changes made to the Uniform Grant Guidance in recent years, as well as to address other grant issues. ED has also noted May of this year as the target date for final Title IX regulations to be issued, however, rules are often not issued by the proposed dates included in the semi-annual regulatory agenda.

[The full semi-annual regulatory agenda can be viewed here](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1800&csrf_token=737DA8331380086C1926655266E205B50F063058E5D68E39800A9A7BBCE2846B9B9E9A74BB1ACD83980497CC7807E3EA053B&source=email).

Resources:

Michael Stratford, “Biden Admin Plans New Round of Rulemaking on Higher Ed, Student Loan Policies,” *Politico*, January 4, 2023.

Author: BNT

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of Brustein & Manasevit’s upcoming virtual trainings. Topics cover a range of issues, including COVID-19 related issues, grants management, the Every Student Succeeds Act, special education, and more. To view all upcoming virtual training topics and to register, visit* [*www.bruman.com/virtualtrainings/*](http://www.bruman.com/virtualtrainings/)*.*

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