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# **The Federal Update for April 5, 2024**

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Re: Federal Update

Date: April 5, 2024

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## Legislation and Guidance

### OMB Announces New Final UGG

In an event Thursday, the White House and the Office of Management and Budget (OMB) revealed its new final regulations for grants management, known as the “Uniform Grants Guidance” or UGG. In remarks, OMB officials discussed the overhaul as an effort to “maximize impact” across the reach of federal programs, government-wide, especially as the nation recovers from the COVID-19 pandemic. A memorandum accompanying the release discussed efforts to reduce burden in the administration of federal financial assistance.

Specific changes highlighted in the event included an increase in the default indirect cost rates, clearer labor standards for federally funded projects, increasing thresholds for certain administrative requirements, and allowing the use of federal funds to gather data and examine the impact of funds. Officials also stated the guidance is now written “in plain English” to make it accessible to everyone, and clarifying language so that agencies have the same understanding – and interpretation – of federal rules.

Other updates include an increase of the disposition thresholds under which equipment and unused supplies may be disposed of without further obligation to the federal government from $5,000 to $10,000 in aggregate value. The threshold at which a recipient is required to conduct a single audit or program-specific audit will increase as well.

The final regulations also include changes to organization costs at 2 CFR 200.455 and direct costs at 200.413 to allow “program evaluation costs” like “evidence reviews, evaluation planning and feasibility assessment, conducting evaluations, sharing evaluation results, and other personnel or materials costs.” Federal agencies would also be required to engage stakeholders and encourage applicants to engage during the design phase to ensure that grant programs are accessible to a larger group of participants.

Agencies are instructed to apply the new standards no later than October 1, 2024 but may apply them earlier – this means that the U.S. Department of Education may choose to implement these rules alongside a new round of federal grant awards on July 1, 2024. A prior version of the guidelines was last updated in December of 2013.

Author: JCM

### ED Delays Gainful Employment Reporting Deadline

The U.S. Department of Education (ED) announced last Friday that it will push back the deadline for institutions to report data under the gainful employment regulations that were finalized in October 2023.

Institutions of higher education (IHEs) have been urging ED to extend the deadline due to the delayed financial aid process this year. Technical and other challenges with the launch of the new Free Application for Federal Student Aid (FAFSA) has left colleges with little time to assemble financial aid packages for students before enrollment deadlines arrive. Many IHEs have expressed concern that compiling the data required under the gainful employment regulations by the original July 31 deadline would be difficult, with staff focused on finalizing financial aid offers as quickly as possible. In its announcement Friday, ED pushed back the deadline for colleges to report the required data until October 1, but the portal will be open beginning July 1 for institutions that want to submit earlier.

While the reporting deadline has been delayed, ED states in its announcement that it still intends to release the first batch of gainful employment data to the public and notify institutions that have failed the gainful employment test in early 2025. ED will also provide technical assistance over the coming months about the gainful employment reporting process and requirements, including frequently asked questions, webinars, and other guidance.

[The ED announcement on gainful employment reporting is available here](https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-03-29/timeline-financial-value-transparency-and-gainful-employment-reporting-requirements?source=email).

Author: KSC

## News

### Religious School Pushes for Charter Status in Court

In the Oklahoma Supreme Court Tuesday, a virtual catholic school and the State’s charter school board defended their position that the school should be classified as a public charter school. Officials in Oklahoma approved the St. Isidore of Seville Catholic Virtual School to operate last year, but its opening this fall was blocked by a lawsuit from Oklahoma Attorney General Gentner Drummond. Another suit has been filed by a group of Oklahoma public school parents, who note that the school refused to sign nondiscrimination and other assurances before being granted its charter.

The school and its supporters argued that recent U.S. Supreme Court precedent in *Carson v. Makin,* and other cases, suggests that the State cannot block funds from religious schools if that is where parents choose to enroll their children. In that case, a Maine voucher system was found to be unconstitutional because it allowed parents to enroll their children in private secular schools but not religious schools. The majority opinion said this limitation was an unconstitutional restriction on parents’ right to freely exercise their religion by sending their children to religious schools – even if they were doing so using public funds. In part, they said, this was because the schools were not “deputized by the State” to provide a free public education.

Drummond argued that the school’s funding would violate the establishment clause – as well as State law. He sought to distinguish the case from the Maine precedent, stating in oral argument that “this case is not about the exclusion of a religious entity from government aid, which would implicate the free exercise of religion… Rather it is about the state creation of a religious school which unequivocally establishes religion.” Drummond also suggested that the only way for the school to win the case is if they are viewed as a private entity, despite their approval from the charter school board and the widely held view that charter schools are State actors.

The Oklahoma justices expressed concern that they were being asked to consider that question, one that the U.S. Supreme Court declined to hear when it denied certiorari to a similar case known as *Peltier v. Charter Day School Inc.* In that case, the Court allowed a 4th Circuit decision, holding that charter schools are clearly public schools, to stand. The justices also worried out loud that they were being used as a test case, expressing their discomfort with being asked to rule on federal law in a way that might be leveraged in other courts.

Regardless of this court’s decision, the question is likely to make its way up to the U.S. Supreme Court. A decision on behalf of the school could lead to a dramatic increase in the number of religious charter schools, throwing formula funding into question and potentially requiring action from Congress to determine whether federal funds would be impacted.

Author: JCM

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