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# **The Federal Update for May 24, 2024**

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

Re: Federal Update

Date: May 24, 2024

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## Legislation and Guidance

### House Approves Overall Cut for Labor-HHS-ED Allocation

The House has continued to move forward on fiscal year (FY) 2025 appropriations in recent weeks, holding hearings on the President’s budget request. This week, the House Committee on Appropriations approved “302(b)” allocations, which set the amount of funding each appropriations account will receive, including the account for the U.S. Departments of Labor, Health and Human Services, and Education (Labor-HHS-ED).

The approved allocation for Labor-HHS-ED is an 11 percent decrease compared to the overall funding level for FY 2024. In addition, the allocations as a whole are lower than the spending caps agreed to for defense and non-defense funding for FY 2025 in the debt ceiling deal reached by Congress and the White House last year. The next step for appropriators on the House Appropriations Subcommittees is to determine how the allocation for each account will be distributed among the agencies in that account and the individual programs administered by those agencies. The decrease in the 302(b) allocation will not necessarily result in an 11 percent cut to ED’s overall budget in future proposed House legislation, as appropriators have flexibility in how the allocation is distributed within the overall account. However, it is likely that the House will propose a cut of some amount to ED funding for FY 2025.

The House plans to begin drafting legislation in the coming weeks.

Resources:

Caitlin Emma, “House appropriators greenlight a dozen GOP funding totals,” *Politico*, May 23, 2024.

Author: KSC

### FSA Offers Guidance on New Financial Responsibility Regulations

In a “dear colleague” letter published earlier this month, the U.S. Department of Education’s Office of Federal Student Aid (FSA) offered guidance on the implementation of regulations regarding college and university Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit (ATB) tests.

The guidance document summarizes each section of regulations that has been modified and attempts to assess the impact. For example, it notes the modification of certain regulatory “triggers” under the financial responsibility sections, highlights some formerly discretionary triggers that have been redesignated as mandatory, and flags new mandatory and discretionary triggers which may lead to further action. It also summarizes the conditions that FSA may impose on institutions which are provisionally certified and those seeking to convert from a for-profit entity to a non-profit institution, as well as the changes to the State process for assessing ATB.

The new regulations go into effect July 1, 2024. However, FSA also notes that the Department understands there are certain circumstances that would prevent institutions from meeting updated State certification or licensure requirements, so says that administration officials will “consider exercising… discretion before taking action” regarding certification until January 1, 2025.

[The guidance document is available here](https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-05-16/implementation-regulations-related-financial-responsibility-administrative-capability-certification-procedures-and-ability-benefit-atb).

Author: JCM

## News

### Supreme Court Won’t Hear Challenge to District Gender Policies

The U.S. Supreme Court set its schedule for the fall term this week, declining to hear a number of cases including a challenge to a school district’s guidelines on support for transgender students.

A group of parents sued Montgomery County, Maryland, challenging support guidelines for transgender students that do not require consent or notification to parents. A lower court declined to hear the lawsuit, stating that the parents lacked standing because the plaintiffs themselves had not been and were not likely to be denied information about their children under the guidelines. The appeal to the Supreme Court asked the justices to determine that the parents do have standing and argued that the policy expressly seeks to “deceive” parents about how the school will treat their children if staff believe that parents will not be supportive of their transition.

The justices denied the petition for a writ of certiorari without comment, despite amicus briefs from a number of conservative groups asking the Court to hear the case and back a concept of parents’ rights.

This topic will likely come before the Court again with challenges to the recently-published regulations under Title IX of the Education Amendments of 1972. A number of the States challenging the rules argue that the regulations would violate parents’ rights, though the U.S. Department of Education states in the preamble to the rule that parents of minor children are named participants in the Title IX process throughout.

Author: JCM

### Republicans Ask Cardona to Withdraw Proposed Debt Relief Plan

A number of Republican Members of Congress sent a letter to Secretary of Education Miguel Cardona this week requesting he withdraw a proposed rule issued last month that would provide partial or total debt relief to millions of borrowers.

The proposed rule would forgive unpaid interest for certain borrowers, including those who currently owe more than they borrowed and make less than $120,000 per year. Borrowers who have been in repayment for 20 years or longer on undergraduate loans (or 25 years on their graduate loans) would be eligible for full cancellation. In addition to other circumstances, borrowers who attended an institution or participated in programs that lost their federal financial aid eligibility would receive relief as well.

The letter calls the most recent proposed plan “the latest in a string of reckless attempts to transfer as much as $1 trillion of student loan debt from those who willingly borrowed to those who did not or have already repaid their loans.” The letter also states that while the U.S. Department of Education (ED) considers the proposed plan “targeted” relief, the price tag would be higher than ED’s original plan that was struck down by the U.S. Supreme Court last year. The lawmakers also claim that ED does not have authority to enact the proposed loan forgiveness, noting that “[t]he Supreme Court has made it abundantly clear that there is zero authority to write-off federal student loans en masse last June when the Department’s ‘Plan A’ was ruled unconstitutional.”

The letter requests that Secretary Cardona withdraw the proposed rule and work with Congress to reform the higher education financing system.

The proposed rule was open for comment until May 17, 2024, and a timeline for the final rule has not been announced. [The Congressional letter on ED’s proposed debt relief plan is available here](https://edworkforce.house.gov/uploadedfiles/student_debt_comment_final_5.20.pdf).

Author: KSC

## Reports

### OCR Reports Record Number of Civil Rights Complaints

The U.S. Department of Education’s Office for Civil Rights (ED OCR) released their annual report this week, which indicated that the Office received a record number of complaints in fiscal year (FY) 2023. OCR received 19,201 civil rights complaints, which is two percent higher than the previous record in FY 2022.

The number of complaints to OCR is almost triple what it was in FY 2009 and OCR notes in the report that complaints are becoming increasingly more complex. Since October, OCR has received an increase in complaints related to antisemitism and anti-Arab discrimination and the Office released guidance last month addressing the requirements for schools and universities to respond under Title VI of the Civil Rights Act of 1964.

Overall, 42 percent of all complaints were related to sex discrimination, 35 percent on disability discrimination, 18 percent on discrimination on the basis of race and national origin, and only three percent related to age discrimination.

Even with the increase in complaints, OCR had the third highest resolution rate in OCR history. In FY 2023, OCR resolved 16,448 cases, an increase from FY 2022. The Office resolved more cases despite a significant decline in overall staffing levels. Since 2009, the number of full-time staff has decreased from 629 to 571 employees. To increase its investigation staffing levels, ED has requested additional funds for OCR in its FY 2025 budget.

The report also includes examples of its investigation efforts and highlights different policy resources and technical assistance provided throughout the year.

[OCR’s FY 2023 annual report can be found here](https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2023.pdf).

Resources:

Mackenzie Wilkes, “Education Department civil rights arm received a record volume of complaints last year, new report shows,” *Politico*, May 22, 2024.

Author: BNT

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