The Bruman Group, PLLC logo

1120 20th Street, N.W., Suite 740

Washington, D.C. 20036

phone: 202.965.3652

fax: 202.965.8913

[bruman@bruman.com](mailto:bruman@bruman.com)

[www.bruman.com](http://www.bruman.com)

# **The Federal Update for October 27, 2023**

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

Re: Federal Update

Date: October 27, 2023

[Legislation and Guidance 1](#_Toc149297903)

[Rep. Mike Johnson Elected as House Speaker 1](#_Toc149297904)

[ED Prepares to Publish New Financial Transparency Rules 2](#_Toc149297905)

[OCTAE Release Guidance on Perkins V State Planning Process 3](#_Toc149297906)

[News 4](#_Toc149297907)

[Advocacy Groups Push for Immediate Release of Title IX Rules 4](#_Toc149297908)

## Legislation and Guidance

### Rep. Mike Johnson Elected as House Speaker

More than three weeks after Representative Kevin McCarthy (R-CA) was ousted as House Speaker, bringing legislative activity in the House to a halt, Representative Mike Johnson (R-LA) was elected to the position on Wednesday. Johnson was the first candidate to receive full support from the House Republicans present, with a 220-209 vote, after earlier Republican candidates failed to garner enough support.

Johnson was serving as the vice chair of the Republican conference prior to being elected as House Speaker and takes the gavel during a challenging time, with several competing legislative priorities on the docket. Johnson has set an ambitious schedule for the House to consider the remaining appropriations bills for fiscal year (FY) 2024 before temporary spending runs out on November 17th. It remains unclear whether the Senate will be able to consider all 12 appropriations bills by the deadline, making a second continuing resolution (CR) likely. If another CR fails to pass, then a government shutdown is possible. In addition to regular year appropriations, the President submitted a request to Congress for supplemental funding this week to support childcare, disaster relief, and aid for Ukraine and Israel, among other asks, which will make FY 2024 negotiations more difficult.

Also on Congress’ agenda is passage or extension of the Farm Bill, which expired on September 30th. Lawmakers and advocates have said the consequences of the bill’s expiration, which left a 1910 law in place, will begin to take hold if action is not taken by the end of December. Lawmakers, including Senator Debbie Stabenow (D-MI), Chair of the Senate Committee with jurisdiction over the Farm Bill, are pushing for a temporary extension to attach to FY 2024 funding, which is most likely to take the form of a continuing resolution on or before November 17th.

Resources:

Katherine Tully-McNamus, “Mike Johnson is the GOP’s next speaker,” *Politico*, October 25, 2023.

Author: KSC

### ED Prepares to Publish New Financial Transparency Rules

The U.S. Department of Education (ED) announced this week that it will release a new package of regulations aimed at helping students access and understand student aid.

The final regulations include changes to the program participation agreement that will prohibit colleges from withholding transcripts for course credits paid with federal dollars. Colleges will also be required to provide “adequate” financial aid counseling, career counseling services, and detailed information on the total cost of education to participate in federal student aid programs. For proprietary or private institutions, entities with direct or indirect ownership of an institution would now be required to sign the program participation agreement.

The regulations also contain new requirements for fiscal responsibility that allow ED to request further fiscal action, such as a letter of credit or other financial protection, when institutions incur new debts or liabilities or are subject to lawsuits by federal or State actors, and when they have high cohort default rates, attempt to manipulate a composite score, or declare a financial emergency. ED would have additional discretion to act if the institution is experiencing certain indicators of financial instability, such as significant fluctuations in student aid, program closures, or adverse action by oversight or accrediting agencies.

Participating schools will be required to provide information on available clinical or externship programs where those are necessary to complete coursework and would require procedures to evaluate the validity of a student’s high school diploma.

ED’s rule will also expand the situations in which a teach-out agreement or plan is required, including for provisionally certified institutions deemed to be at risk of closure. The rule also requires distance education providers to comply with teach-out and other requirements in each State in which they have students.

Finally, a new set of “ability to benefit” rules set out options for students without a high school diploma to access federal financial aid, define an eligible career pathway program, and set documentation standards for each institution.

The new final regulations will take effect on July 1st, 2024. A [summary from the U.S. Department of Education is here](https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/non-ge-final-rules-fact-sheet.pdf) and the text of the final rule as it will be published in the *Federal Register* [is here](https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/financial-responsibility-admin-capability-cert-procedures-ability-to-benefit-final.pdf).

Author: JCM

### OCTAE Release Guidance on Perkins V State Planning Process

The U.S. Department of Education’s (ED’s) Office of Career, Technical, and Adult Education (OCTAE) issued a program memorandum on Thursday that outlines policy issues ED encourages States to consider as they work on updating or re-drafting their Perkins V State plans and their Workforce Innovation and Opportunity Act (WIOA) plans, which are both due in 2024.

OCTAE notes that many governors have announced that expanding and improving career and technical education and workforce development are key priorities for their State and that the Perkins V and WIOA State planning processes provide an opportunity for States to “build on this commitment.” In its policy memorandum, OCTAE sets out four policy areas that it recommends States consider as they update their State plans: (1) State vision and goals, (2) accountability and data, (3) program quality and alignment, and (4) formula, leadership, and reserve funds.

Within the first policy area, OCTAE directs States to align the State’s vision to today’s economy and the future economy; use high-skill, high-wage, and in-demand sectors or occupations to connect career and technical education programs and jobs; and support joint State planning, alignment, and coordination. Under accountability and data, OCTAE encourages States to use all three of the Perkins V statutory measures of program quality for secondary programs (States are only required to use at least one), as well as align accountability models for high school with those under the Elementary and Secondary Education Act and require recipients at all levels to publicly post outcome data.

For program quality and alignment improvements, OCTAE tells States to use their statutory authority to create programs of study that expand access to high-quality training and education and use the definitions of “size, scope, and quality” to “create policy conditions that improve student success.” In following the greater focus on equity in Perkins V compared to prior Perkins laws, OCTAE also encourages States to use outcome data to support equity and special populations. On the final policy area of formula, leadership, and reserve funds, OCTAE suggests States consider changes to their postsecondary funding formula to ensure it is equitable based on student needs, and that States fully leverage their State leadership and reserve funds.

States have two options for their Perkins V plan in 2024: (1) update their current plan to establish State determined performance levels and budgets for fiscal year (FY) 2024 or (2) draft a new four-year State plan that will cover FY 2024-2027. States are also permitted to submit a combined plan that covers Perkins V and WIOA. Perkins V State plans are due by May 10th, 2024.

Author: KSC

## News

### Advocacy Groups Push for Immediate Release of Title IX Rules

Over 100 groups signed a letter this week urging the Biden administration to release tow pending Title IX rules. The groups included civil rights, domestic violence survivor advocacy, and gender justice organizations. They asked the administration to hold to its promise and release the final rule on educational programs and activities – which specifically addresses sexual harassment and assault – by the end of this month.

That Title IX rule has been delayed multiple times, with the U.S. Department of Education (ED) saying earlier this year that it needed more time to ensure that the rule would be able to withstand the legal challenges that it is expected to face. ED must also review the more than 240,000 comments submitted on the proposed rule last year. Once ED releases the final rule, it will then be sent to the Office of Management and Budget for review and stakeholder meetings. That review can take up to 90 days, further delaying implementation of the rule.

Advocacy groups say they are concerned that, while the rule is being finalized, the Title IX rule from the previous administration is still in effect. The current rule, published in 2020, narrowed the definition of sexual harassment and does not provide protections for LGBTQI+ students. It also directs schools and institutions on how to respond to sexual misconduct. Advocacy groups have said that attacks on students from marginalized populations are expanding and have been further exacerbated by State laws that run contrary to the current administration’s interpretation of Title IX.

Advocacy groups say they are holding the President to his 2020 campaign promise to “immediately” end the current Title IX rule. The final rule is expected to expand the definition of “sex,” provide protections for transgender students, and ban discrimination based on gender and sexuality. A linked rule on participation in gender-specific athletics teams is expected around the same time.

[The letter can be viewed here.](https://nwlc.org/resource/127-gender-justice-survivor-advocacy-and-civil-rights-organizations-urge-immediate-release-of-title-ix-rule/?source=email)

Resources:

Quilantan, Bianca, “Advocacy groups press Biden administration to finalize Title IX rule,” *Politico*, October 23, 2023.

Author: BNT

***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.***

© The Bruman Group, PLLC 2023

Contributors: Julia Martin, Kelly Christiansen, Brandi Tennant

Posted by the California Department of Education, October 2023  
[www.bruman.com](http://www.bruman.com/)