The Bruman Group, PLLC logo, address, and contact information
1120 20th St, NW, Suite 740 Washington, D.C. 20036
Phone: 202.965.3652
Fax: 202.965.8913
bruman@bruman.com
www.bruman.com
Fax: 

# **The Federal Update for April 26, 2024**

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

Re: Federal Update

Date: April 26, 2024

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*There will be no Federal Update on Friday, May 3rd due to The Bruman Group’s Spring Forum. The next issue of the Federal Update will be published on Friday, May 10th.*

## Legislation and Guidance

### ED Announces ESSER Admin Funds Consolidation

In a Dear Colleague letter sent to States on Thursday, the U.S. Department of Education (ED) announced that some State administrative funds under American Rescue Plan Act (ARP) programs can be consolidated with Elementary and Secondary Education Act (ESEA) administrative funds, allowing those administrative funds to be used for closeout, reporting, and monitoring through March 31, 2026.

In the letter, ED says that States can consolidate program administration funds under the Elementary and Secondary School Emergency Relief Fund (ESSER) and the Emergency Assistance to Non-Public Schools (EANS) fund, as well as the special funding for Homeless Children and Youth (ARP-HCY) into ESEA administration under Section 8201(a)(2) of ESEA. That provision allows administrative funds specifically to be consolidated so long as the State educational agency can demonstrate that the majority of its administrative resources are derived from non-federal sources. States do not need a waiver or approval for this consolidation.

Once that consolidation is complete, ED says it will allow States to seek a waiver of Section 421(b) of the General Education Provisions Act (GEPA), commonly known as the Tydings Amendment, to extend the period of availability of those administrative funds. With an approved waiver, consolidated funds could be used for ARP reporting, monitoring, and closeout through March 31, 2026.

ED has said that it will “work closely with States to process complete waiver requests as quickly as possible.”

Author: JCM

### USDA Issues Final Rule on School Nutrition Guidelines

The U.S. Department of Agriculture (USDA) issued a final rule on Wednesday that will require schools to serve foods with less added sugar and sodium, aligning school nutrition requirements to federal dietary guidelines. A proposed version of the rule was issued in February 2023, and USDA made some modifications in the final rule due to stakeholder feedback and Congressional action.

Limits on added sugar will begin taking effect in the 2025-2026 school year, first targeting yogurt, cereal, and milk, with further reductions required for all foods in the following two years. The regulations do not prohibit flavored milk, which was an option considered under the proposed rule, but the limitations on added sugar will apply to those beverages. The sodium reductions included in the final regulations are less than the proposed version due to a provision included in fiscal year 2024 funding legislation prohibiting USDA from reducing sodium beyond a certain level. The final regulations require schools to reduce sodium by 10 percent in breakfasts and 15 percent in lunches by fall of 2027, but schools will not be required to meet incremental reductions over the next few years as suggested in the proposed rule. The final rule does not make any changes to the current whole grain requirements in school meals, acknowledging the feedback from commenters on the potential difficulty of obtaining compliant foods.

In addition to changing nutrition standards, the rule also limits the amount of non-domestic food products that schools can purchase beginning in the fall of 2025 to a maximum of 10 percent, with an eventual reduction to 5 percent. Schools will also be permitted to require food products to be locally grown, caught, or raised beginning in the 2024-2025 school year, and can serve traditional indigenous foods as part of a reimbursable school meal.

[The final rule is available here](https://www.govinfo.gov/content/pkg/FR-2024-04-25/pdf/2024-08098.pdf).

Author: KSC

## News

### Foxx, Steel Send Letter to ED IG on Financial Aid Fraud

Chair of the House Committee on Education and the Workforce Virginia Foxx (R-NC) and Representative Michelle Steel (R-CA) sent a letter to the U.S. Department of Education’s (ED’s) Inspector General, Sandra Bruce, to express concerns about fraud in student financial aid programs.

The lawmakers say that millions of dollars in federal financial aid funding has been paid to individuals who enrolled at colleges but did not ultimately attend, noting that these individuals take enrollment spots from actual prospective students and take a “financial toll on this nation.” Foxx and Steel also write that financial aid fraud has increased since the COVID-19 pandemic, even after pandemic flexibilities that simplified the process for becoming eligible for student aid have ended.

The letter requests that the Inspector General brief the lawmakers’ staff by May 8, 2024 on the actions ED takes to prevent federal financial aid fraud.

[The letter from Foxx and Steel is available here](https://edworkforce.house.gov/uploadedfiles/oig_ltr_brfng_student_aid_fraud_to_vf.pdf).

Author: KSC

## Reports

### GAO Issues Report on Federal Audit Clearinghouse

The Government Accountability Office (GAO) issued a report this week that identifies issues with the reliability of information contained in the Federal Audit Clearinghouse (FAC). The FAC has been maintained by the General Services Administration since October 2023.

Under prior federal rules, all nonfederal entities spending $750,000 or more per year in federal funds were required to submit to a single audit and then provide the report to the FAC (that threshold has been increased to one million under recently published updates to the Uniform Grant Guidance). For fiscal year 2023, approximately 40,000 single audits were submitted to the FAC. GAO conducted an analysis of the FAC data reliability and processes. GAO found that the FAC is unable to identify entities that were required to submit an annual single audit but failed to do so, which GAO says makes oversight by federal agencies more difficult. In addition, GAO found that the Office of Management and Budget (OMB) has not selected an entity to conduct a quality review of single audits governmentwide in over 15 years.

GAO provides three recommendations to Congress in the report, including amending the Single Audit Act to require regular governmentwide single audit quality reviews, requiring the Director of OMB to submit a report on such review to the applicable Congressional committees, and requiring federal agencies to coordinate with the Director of OMB on a governmentwide review. GAO also makes a total of 16 recommendations to OMB and the General Services Administration, including working with federal agencies to make a number of improvements to the FAC.

[The full GAO report on the FAC is available here](https://www.gao.gov/assets/d24106173.pdf).

Author: KSC

***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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Contributors: Julia Martin, Kelly Christiansen

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