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# **The Federal Update for January 12, 2024**

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

Re: Federal Update

Date: January 12, 2024

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## Legislation and Guidance

### Congressional Leaders Reach Deal on FY 2024 Funding Framework

House and Senate leaders reached a funding deal over the weekend that sets the top line funding amounts for fiscal year (FY) 2024 for defense and non-defense spending. The numbers agreed to align closely with the debt ceiling deal agreement reached last summer, keeping FY 2024 funding at similar levels to the prior fiscal year.

The spending deal reached this week is about $30 billion less than the draft bills prepared by the Senate last fall, and significantly more than the legislation proposed previously by the House. Funding for portions of the federal government runs out on January 19, while the remaining agencies, including the U.S. Department of Education, are funded until February 2. Although overall spending levels have been agreed to, lawmakers must still draft legislation, which is unlikely to be finished before the first appropriations deadline arrives. In addition, many other details have yet to be settled, including a White House request for foreign aid, as well as potential policy riders as part of a final funding package, which may delay negotiations further.

While Senate Democrats are generally supportive of the deal, it remains unclear whether Speaker of the House Mike Johnson (R-LA) will receive support from his party, as the deal includes significantly more funding for non-defense programs than conservatives have been pushing over the past few months, leading them to threaten to remove him from the Speaker’s chair. Lawmakers are discussing the possibility of a third short-term spending gap expiring on March 1st to provide more time to draft legislation, but there is not yet consensus on another continuing resolution.

Resources:

Caitlin Emma and Jennifer Scholtes, “Johnson strikes his first bipartisan deal – a $1.7T funding accord,” *Politico*, January 7, 2024.

Author: KSC

### ED Releases Proposed EDGAR Changes

This week the U.S. Department of Education (ED) released a notice of proposed rulemaking, which proposed a number of changes to the Education Department General Administrative Regulations (EDGAR). The last update to EDGAR was in 2013 and those changes pertained primarily to Direct Grants under 34 C.F.R Part 75. The last update to Part 76 on State Administered programs was in the early 1990s. ED said that the proposed changes corrected “outdated, unnecessary, or inconsistent” language. However, the proposed rules, covering 34 C.F.R. 75, 76, 77, 79, and 299, also include some significant changes.

ED first proposes to rewrite the definitions section in Part 77. One change would adjust the definition of “period of performance” to the “period during which funds can be obligated by the grantee” and remove the reference to the Uniform Grants Guidance (UGG), which has a different definition. The definitions section also clarifies the difference between “construction” and “minor remodeling” and further defines what “evidence-based” means for direct grants. ED also proposes to add definitions for “evaluation” and “independent evaluation.”

The most significant change pertains to the requirements on subgrants in section 76.50. ED proposes changing the section to say that both States and subgrantees may further subgrant federal dollars (as opposed to entering into contracts), unless specifically prohibited by the statute, regulation, or the terms of the grant award. This is a reversal of a 50-year policy that States and subgrantees could subgrant only if authorized by the underlying statute. The Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, the Strengthening Career and Technical Education for the 21st Century Act (Perkins), and the Adult Education and Family Literacy Act generally do not include language prohibiting subgranting.

The changes also include updates to section 76.401 and the appeal process for applicants denied awards by States for formula grants. ED proposes that all applicants whose applications are disapproved by a State are entitled to a hearing. This includes applicants for Perkins V and the Adult Education program, who were previously not entitled to a hearing. Applicants appealing the disapproval must allege that the State violated a specific State or federal statute or regulation and any subsequent appeals have to include a federal citation that the State violated.

ED also proposes changes to equitable services under sections 76.650 to 76.662 and Part 299. Since ED has issued program-specific regulations regarding equitable services, it proposes removing these sections, as they are now unnecessary or inconsistent with other regulations. The proposed rules also include additions at section 299.16 and 200.17, which addresses requirements for States in the resolution of equitable services complaints and any appeals of those resolutions.

In addition, the proposed rules include changes to indirect costs in sections 76.560 to 76.569, which align with the UGG. ED proposes changes to sections 75.600 to 75.617 as well, which deal with construction and real property acquisition. The proposal adds requirements for approving construction projects, clarifying how other federal legislation applies to certain projects, and adds nondiscrimination assurances, among other changes.

The full notice of proposed rulemaking can be found [here](https://www.federalregister.gov/documents/2024/01/11/2023-27682/education-department-general-administrative-regulations-and-related-regulatory-provisions). Comments on the proposed rules must be submitted electronically [here](https://www.regulations.gov/document/ED-2023-OPEPD-0110-0001) by February 26, 2024.

Author: BNT

### House Committee Passes Pregnant Students’ Rights Act

The House Committee on Education and the Workforce passed legislation on Wednesday designed to provide more information to pregnant students on the supports available to them from their schools. The Pregnant Students’ Rights Act (H.R. 6914) would require institutions of higher education, as a condition of their participation in federal student aid programs, to provide students with information about the accommodations schools must provide to pregnant students, community supports that may be available, and how to appeal to the U.S. Department of Education’s Office for Civil Rights if they feel their rights have been violated.

While the legislation was billed as a way to ensure that students are not discouraged from attending school and don’t fall behind during pregnancy, Democrats on the Committee raised questions about the source of the statistics cited in the bill’s “findings” section – for example, that “[a]lmost 30 percent of all abortions in the United States are performed on women of college age” and that “[a]n academic disparity exists because of the lack of resources, support, and notifications available for female college students who do not wish to receive an abortion or who carry their unborn babies to term.” Democrats also noted that the resources colleges would be required to outline do not include abortion – and in fact, the Senate counterpart of the legislation specifically excludes abortion from the services about which colleges must provide information.

The draft Title IX regulations proposed by the U.S. Department of Education last year would require that schools offer some protections for pregnant students, including a reasonable break time and space for pumping and flexibility with course modifications to assist with completion. The final version of those rules is expected in March.

The Pregnant Students’ Rights Act passed the House committee by a vote of 24-17 and will go to the House floor next.

Author: JCM

### ED Publishes Template, Guidance on ARP Liquidation Extensions

This week the U.S. Department of Education shared a letter and guidance, as well as an updated template, on requesting extensions to the liquidation period under the third tranche of funding for the Elementary and Secondary School Education Relief (ESSER) fund (also known as ARP-ESSER) and the Emergency Assistance to Nonpublic Schools (ARP-EANS) program.

The template and guidance follow closely with versions published under the two prior funding years, but with several key differences. First, grantees applying for an extension must list examples of supporting documentation available on the template during their application. Additionally, the cover letter states that grantees must provide a cover letter that explains how the ARP ESSER and/or EANS liquidation extension request contributes to the “acceleration of academic success for students, including those furthest from opportunity and with the greatest need.” The cover letter further goes on to note that examples of this kind of expenditure could include “increasing daily student attendance; providing high-quality tutoring; and increasing access to before, after, and summer learning and extended learning time.” The letter does not prohibit extensions on other types of expenditures that districts and States have commonly made with ESSER funds, including construction. It is also not clear if the grantee’s letter is meant to merely highlight certain expenditures, or if such an explanation must be made for each expenditure for which an extension is requested.

Finally, the grantee template – but not the subrecipient template – asks for an “explanation” for late liquidation and to describe measures taken to liquidate in a timely fashion but eliminates the language suggesting that simply needing more time to spend the money is not an adequate justification. The subrecipient template still states that “needing more time to expend funds is not an adequate reason or justification for a liquidation extension.”

The  [ARP ESSER Liquidation Extension Letter](https://oese.ed.gov/files/2024/01/ARP-Liquidation-Extension-Letter-1.9.24-final-for-signature-v3.pdf), [Updated Technical FAQs for ARP ESSER and ARP EANS Liquidation Extensions](https://oese.ed.gov/files/2024/01/Updated-Technical-FAQs-for-Liquidation-Extensions-1.9.24-v-2-for-posting.pdf), and [Liquidation Extension Request template](https://oese.ed.gov/files/2024/01/ARP-ESSER-EANS-Liquidation-Extension-Request-1.10.24-v3.xlsx) are available on ED’s website. ED suggests that requests be filed by December 31, 2024.

Author: JCM

## News

### Administration Announces Early Start to SAVE Program

The U.S. Department of Education (ED) announced this morning that it would implement a new student debt repayment program earlier than expected.  This initiative, known as SAVE, will forgive the balances of student loan borrowers who initially borrowed less than $12,000 and have made payments for 10 years or more.  The shorter timeline and lower balance is aimed at borrowers who took out relatively small amounts of loans to attend community college, or who started college and never finished.  Borrowers who took out larger loans could have their loans forgiven after additional years of repayment.

In a statement, President Biden that this move is part of his administration’s “ongoing efforts to act as quickly as possible to give more borrowers breathing room so they can get out from under the burden of student loan debt,” adding “I won’t back down from using every tool at our disposal to get student loan borrowers the relief they need to reach their dreams.”

The forgiveness was scheduled to take effect in July, but administration officials now say that they will start cancelling debt as early as next month.  The White House and ED are also working on another, larger debt relief plan that will target additional populations of borrowers after a preliminary version of the plan was struck down by the U.S. Supreme Court.

Author: JCM

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Posted by the California Department of Education, January 2024