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# **The Federal Update for January 19, 2024**

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

Re: Federal Update

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## Legislation and Guidance

### Congress Passes Third Stopgap Measure for FY 2024 Funding

Congress passed a third short-term spending bill on Thursday for fiscal year (FY) 2024, extending funding at current levels to early March. Funding for certain federal agencies was set to expire Friday night without additional action by Congress – the first deadline under the “laddered” continuing resolution (CR) Congress passed in the fall. The previous laddered CR extended funding for four appropriations accounts until January 19 and the remaining accounts, including funding for the U.S. Department of Education, until February 2.

Congressional leaders recently reached a deal on overall levels for defense and non-defense spending for FY 2024 that would increase funding less than one percent compared to FY 2023. However, lawmakers did not have enough time to draft and pass final legislation before the January and early February CR deadlines arrived. The third CR passed Thursday follows the same “laddered” approach as the prior short-term measure, extending funding for the first batch of agencies to March 1 and funding for the remaining agencies, including ED, to March 8.

Following passage in the Senate, the CR was passed with significant Democratic support in the House but significant Republican opposition as many conservative Republicans opposed passing another short-term spending bill. Lawmakers will turn to drafting and passing final appropriations legislation over the next few weeks, but negotiations are expected to be challenging, as House conservatives push to include changes addressing U.S. border security and controversial policy provisions.

Author: KSC

## News

### Supreme Court Hears Oral Arguments in Agency Deference Case

This week the U.S. Supreme Court heard oral arguments in two cases that could upend the amount of deference courts and other entities give to federal agency interpretations. The two cases challenge a rule issued by the National Marine Fisheries Services, which requires herring fishboats to transport and pay the cost of the federal fishing observers who serve as federal monitors. The plaintiffs challenged the rule, arguing that it was not reasonable to ask the herring industry to pay the cost of federal monitoring. Lower courts, however, upheld the rule, determining that it was a reasonable interpretation of federal law allowable under a principle known as the Chevron Doctrine. This principle, named after a 1984 Supreme Court decision in *Chevron v. Natural Resources Defense Council*, held that because federal agencies and their staff are subject matter experts, in cases where Congress has not been adequately specific in outlining interpretations of law, courts and others should defer to the “reasonable” interpretation of the relevant federal agency.

The plaintiffs in the cases currently before the Supreme Court, *Loper Bright Enterprises. Raimondo* and *Relentless, Inc. v. Department of Commerce*, argue that this approach requires courts to allow agencies to apply interpretations that are burdensome, politically motivated, or less logical than others simply because they broadly qualify as “reasonable.” The plaintiffs’ attorneys also cited as problematic the fact that agency interpretations can change from one administration to another, and that these frequently changing interpretations may place additional costs on individuals and businesses.

While the Court’s three liberal justices suggested that it makes sense to have an agency or entity with expertise be a “tiebreaker” in situations where there is real disagreement about what an ambiguous law means, the conservative justices seemed poised to overturn Chevron. The conservative justices also suggested that the impact of overruling Chevron would be minimal since the Court has not directly relied on the case in some years. But the Solicitor General, arguing for the federal government, suggested that litigants would “come out of the woodwork” to challenge agency decisions if they knew deference would no longer be granted.

If the Chevron doctrine is overturned in the Court’s decision this spring, it could have significant implications for upcoming regulations from the U.S. Department of Education (ED) in areas where the statute is ambiguous. This includes, for example, the forthcoming regulations on Title IX, where ED plans to define “sex” – a term which the 1972 statute leaves vague – to include gender identity and sexual orientation.

Author: JCM

### House Committee Criticizes ED on Audit Findings

In a letter from the House Committee on Education and the Workforce, lawmakers slammed the U.S. Department of Education (ED) on weaknesses in its administration of federal student loan programs as identified in independent audits.

The audits, conducted by KPMG, determined that ED had made errors in student loan data, which it then used to calculate subsidies for the Direct and Federal Family Educational Loan programs. KPMG also stated that it was not able to obtain “sufficient appropriate audit evidence” to determine the extent of the impact of these errors. In addition, the audit identified internal controls weaknesses at ED, as well as information technology systems issues. Prior IT issues identified in audits had not been remediated, per the audit report.

In their letter, the Committee members say they will ask Secretary of Education Miguel Cardona to appear at a future hearing regarding the audit and have asked him to provide detailed information on the data errors, ED’s efforts to address the errors, and correspondence within ED and with other federal agencies on these issues. The letter criticizes the agency’s actions as “bungling, dereliction of duties, and general disregard for the interests of the taxpayer” and suggests that the results of the audit are an “embarrassment.”

The [Congressional letter is here.](https://edworkforce.house.gov/uploadedfiles/ltr_fy2023_audit.pdf)

Author: JCM

***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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