

# The Federal Update for February 3, 2023

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Re: Federal Update

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[Legislation and Guidance 1](#_Toc126325540)

[USDA Announces Proposed School Nutrition Guidelines 1](#_Toc126325541)

[News 2](#_Toc126325542)

[House Committee on Education and Workforce Takes Shape 2](#_Toc126325543)

[Senate HELP Committee Releases Roster 3](#_Toc126325544)

[House Oversight to Examine COVID Relief Spending 3](#_Toc126325545)

[President to Issue Budget Proposal March 9th 4](#_Toc126325546)

[DeLauro Pens Op-Ed on OPMs 4](#_Toc126325547)

## Legislation and Guidance

### USDA Announces Proposed School Nutrition Guidelines

The U.S. Department of Agriculture’s Food and Nutrition Service (FNS) announced a proposed rule today that would impose stricter nutrition guidelines for school meals, including the amount of added sugar and sodium permitted in meals, as well as increasing the use whole grain products.  Nutrition guidelines limiting the amount of sodium and requiring more whole grains were originally implemented under the Obama administration as part of the Healthy, Hunger-Free Kids Act, and are supposed to match the current Dietary Standards for All Americans.  However, under the Trump administration, FNS introduced more flexibility in meeting certain nutrition requirements, and additional flexibilities have been provided over the past three years to address school meal challenges associated with the COVID-19 pandemic.

The proposed rule, which is expected to be published in the *Federal Register* next week, takes a phase-in approach to implementing multi-phase limits on added sugar and sodium in school meals and expanding whole grain options.  FNS says the proposed rule is the next step in the transitional approach to re-implementing nutrition guidelines following flexibilities provided during the COVID-19 pandemic.  The proposed rule will use a phased approach to reduce the amount of added sugar in schools meals, targeting particular food products first, such as yogurt, and then moving to an overall weekly limit on added sugar.  The proposed rule outlined two potential options with regard to flavored milk offerings for public feedback: (1) limiting choices in K-8 schools to a variety of unflavored milk options only or (2) maintaining the current standard, which allows K-12 schools to offer fat-free and low-fat flavored and unflavored milk.  Finally, the proposed rule seeks comment on a potential expansion of whole grain offerings to encompass all grain offerings with the exception of one day per week, seeking input on whether that should happen over a two- or three-year period.  The proposed rule makes technical adjustments to current child nutrition regulations as well and strengthens Buy American requirements for school meals.

Along with the proposed rule announcement today, FNS launched a Healthy School Meals Initiative that will provide $17 million for an Action for Healthy Kids grant that will “identify, celebrate, and showcase schools implementing successful and creative strategies for serving healthy, appealing meals.”  FNS is also providing $30 million for grants to small and rural school districts to help improve the nutritional quality of their school meals.

[An unofficial version of the proposed rule is available here](https://www.fns.usda.gov/sites/default/files/resource-files/cn-highlights-proposed-rule-nutrition-standards-020323.docx).

Author: KSC

## News

### House Committee on Education and Workforce Takes Shape

Chair of the House Committee on Education and Workforce, Virginia Foxx (R-NC), announced subcommittees and assignments this week for the 118th Congress. The announcement follows the release of the Republican and Democratic rosters for the Committee last week. Foxx also released her oversight plan for the Committee, which will be a key focus area over the next two years.

There will be a total of four subcommittees for this Congress, one less than the Committee had under the 116th and 117th Congresses, as Republicans have eliminated the Subcommittee on Civil Rights and Human Services. The remaining four subcommittees include: (1) Early Childhood, Elementary, and Secondary Education; (2) Higher Education and Workforce Development; (3) Health, Employment, Labor, and Pensions; (4) and Workforce Protections. Overall, the Committee has a total of 45 members, with 25 Republicans and 20 Democrats.

In her oversight plan, Foxx identifies a number of education-related issue areas that the Committee intends to focus oversight action on over the next two years. These areas include action from the Biden administration on student loans, implementation of the FAFSA Simplification Act, preservation of First Amendment rights on college campuses, use of COVID-19 education relief funding, and the expected final regulations on Title IX. In addition, Foxx says the Committee will provide oversight of child nutrition programs and workforce programs, including apprenticeship programs and programs under the Workforce Innovation and Opportunity Act (WIOA).

In terms of legislative priorities for the Committee, Foxx stated in an interview with *Politico* this week that legislation on parents’ rights in education and school choice will be two focus areas. Foxx also said that she “can’t wait” to reopen the conversation on reauthorizing WIOA, after the 117th Congress failed to pass a bipartisan bill. However, with other competing priorities, it remains unclear how likely a WIOA reauthorization bill is in 2023.

Resources:

Eleanor Mueller and Bianca Quilantan, “Politico Pro Q&A: House Education and the Workforce Chair Virginia Foxx,” *Politico*, January 30, 2023.

Author: KSC

### Senate HELP Committee Releases Roster

This week the Senate Committee on Health, Education, Labor, and Pensions announced its membership slate for the 118th Congress.  Senator Bernie Sanders (I-VT) will serve as chair, with Senator Bill Cassidy (R-LA) as ranking member.  Among the returning Democrats is Senator Patty Murray (D-WA), who had previously been chair but who is taking over leadership on the Senate Appropriations Committee.  Other continuing Senators are Bob Casey (D-PA), Tammy Baldwin (D-WI), Chris Murphy (D-CT), Tim Kaine (D-VA), Maggie Hassan (D-NH), Tina Smith (D-MN), Ben Ray Lujan (D-NM), John Hickenlooper (D-CO), Rand Paul (R-KY), Susan Collins (R-ME), Lisa Murkowski (R-AK), Mike Braun (R-IN), Roger Marshall (R-KS), Mitt Romney (R-UT), and Tommy Tuberville (R-AL).  New members joining the panel are Senators Ed Markey (D-MA), Markwayne Mullin (R-OK), and Ted Budd (R-NC).

The new Committee will meet for the first time on February 9th to finalize rules and discuss a funding resolution.

Author: JCM

### House Oversight to Examine COVID Relief Spending

The House Committee on Oversight and Accountability held a hearing this week to examine “fraud, waste, and abuse” within federal COVID-19 relief programs. Committee Chair James Comer (R-KY), announced that the hearing is the first step in a longer-term oversight plan for pandemic relief spending. The House Committee action followed an alert from the Pandemic Response Accountability Committee (PRAC) earlier this week that over $5 billion in Paycheck Protection Program funds and Economic Injury Disaster Loans may have been awarded to ineligible businesses or to applicants using false social security numbers.

During the Committee hearing this week, Comer said that the “Committee will evaluate the hundreds of billions of dollars of grants and loans doled out from nearly every agency in the federal government.” This includes the Elementary and Secondary School Emergency Relief Fund, which Comer says was “meant to help reopen schools and address learning loss,” but was “often used on unrelated expenditures, and even to push divisive ideologies onto our students.”

The House Committee’s action aligns with a renewed focus on oversight as Republicans take over as the majority party in the House, which includes expected oversight of COVID-19 education relief funds from the House Committee on Education and Workforce as well.

Resources:

Tony Romm, “$5.4 billion in covid aid may have gone to firms using suspect Social Security numbers,” *Washington Post,* January 30, 2023.

Author: KSC

### President to Issue Budget Proposal March 9th

The White House announced this week that the President would release his budget proposal for federal fiscal year (FY) 2024 on March 9th. In a memorandum, the White House said that the budget proposal would “show how the President plans to invest in America, continue to lower costs for families, protect and strengthen Social Security and Medicare, and reduce the deficit.”

In a speech Tuesday, President Biden said that Democrats “didn’t get enough done” on education spending in the last term, referencing his proposal to increase Title I and Individuals with Disabilities Education Act funding by 20 percent, which did not come to fruition in the FY 2023 appropriations bill passed by Congress in December.

The President noted the importance of expanding preschool and apprenticeship programs among other educational options, stating “[w]e can not only afford to do that, we can’t afford not to do that,” Biden said. “It's critical that we, in fact, improve our education system. And, by the way, that includes, believe it or not, paying teachers more.”

The budget proposal will be previewed in the State of the Union address, scheduled for February 7th.

Author: JCM

### DeLauro Pens Op-Ed on OPMs

Representative Rosa DeLauro (D-CT), who serves as the Ranking Member on the House Appropriations Committee, released an op-ed this week calling for greater oversight of online program management companies (OPMs). OPMs are third parties that contract with institutions of higher education (IHEs) to manage online programs, and often to recruit students for those programs. Currently, there are at least 25 for-profit OPMs that recruit for online programs at various IHEs.

DeLauro is most concerned with tuition-sharing agreements between IHEs and OPMs, as the OPM industry is expected to make almost $8 billion in revenue by 2025. These companies, she argues, profit off excessive debt burdens on students. DeLauro details a lawsuit filed by students in December against the University of Southern California (USC) and its OPM partner, 2U. Students claim that, in order to increase profit, USC and 2U misled prospective graduate students to USC’s Rossier School of Education about the school’s national rankings. The students also allege that the social work program was simply a “degree mill” that was significantly more expensive than comparable programs. According to the complaint, 2U encouraged students to take advantage of the federal Grad Plus student loan program, which allows students to borrow as much as IHEs charge to pay for graduate programs. The tuition-sharing agreement between USC and 2U provided that 2U would receive 60 percent of the program’s revenue, providing a large incentive for 2U to recruit students.

DeLauro urges the U.S. Department of Education (ED) to intervene and protect students from OPMs that profit off of students’ disproportionate debt burdens that they struggle to pay off. Most importantly, she encourages ED to rescind its 2011 guidance on incentive compensation. The Higher Education Act (HEA) bans incentive compensation, which prevents IHEs from providing incentive compensation to recruiters for securing student enrollment. However, the 2011 guidance letter allowed for a “bundled services exception” to the ban. The exception allows tuition-sharing agreements between IHEs and OPMs to include compensation to OPMs for recruitment as long as it is bundled with other services. DeLauro explains that the exception allows for aggressive OPM recruitment.

Further, DeLauro recommends that ED implement other changes, including requiring that contractors are not involved in decision-making and creating genuine disincentives through harsh financial penalties for OPMs that engage in predatory behavior.

[Read the entire op-ed here.](https://www.highereddive.com/news/Rosa-DeLauro-for-profit-online-program-management-companies-OPM-predators/641131/)

Author: BNT

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