

# The Federal Update for April 29, 2022

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Re: Federal Update

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*Due to Brustein & Manasevit’s Virtual Spring Forum May 2-5, the next issue of the Federal Update will publish on Friday, May 13th.*

## Legislation and Guidance

### Treasury Says SLFRF Can Be Used for School Construction

In a Frequently Asked Questions document issued this week, the Treasury Department says that State and Local Fiscal Relief Funds (SLFRF) can be used to pay for public school facility upgrades, improvements, and new construction. These expenditures should make buildings more energy efficient, increase their use of renewable energy, address capacity constraints, or respond to other health and safety concerns. Treasury considers these expenses part of the “public health and negative economic impacts” (PH-NEI) use, which provides for a number of options around improving the health impact of buildings. But Treasury also says that it considers construction to be an allowable use of the “revenue loss” expenditure category, which provides up to $10 million for government entities to cover expenditures made for improvements, maintenance, or new construction to public schools.

Funds under the SLFRF program must be obligated by December 31, 2024 and liquidated by December 31, 2026. Notably, Treasury states that Davis-Bacon Act prevailing wage requirements do not apply to projects funded solely through the SLFRF program.

The [SLFRF FAQ document is available here](https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf?source=email).

Author: JCM

### ED Expands Second Chance Pell

The U.S. Department of Education (ED) took action this week to expand the Second Chance Pell Experiment, which provides Pell Grants to incarcerated individuals to attend participating programs. The initiative was launched in 2015 during the Obama administration.

ED has invited 73 new colleges to participate in the third round of the experiment, bringing the total number of participants to over 200. The expansion provides a stepping stone toward implementation of a legislative expansion of the overall Pell Grant program that was passed in 2020. That expansion will open the Pell Grant program to incarcerated individuals participating in college-in-prison programs beginning on July 1, 2023.

In addition to the Second Chance expansion, the administration is also moving to allow incarcerated individuals to consolidate their existing student loans to move out of default status, which has not previously been an option available to that population.

Finally, the expansion of Pell Grants for use in short-term programs may be coming soon. The administration has backed a provision included in a House China competitiveness bill that was passed earlier this year that would allow Pell Grants to be used in short-term postsecondary programs, such as certification programs, as opposed to only traditional longer-term programs. The House and Senate are currently negotiating a final bill, which may include the short-term Pell provision as it has garnered bipartisan support in the past.

Resources:

Bianca Quilantan, “Cardona ‘excited’ about short-term Pell possibility,” *Politico*, April 26, 2022.

U.S. Department of Education Press Release, “U.S. Department of Education Announces Expansion of Second Chance Pell Experiment and Actions to Help Incarcerated Individuals Resume Educational Journeys and Reduce Recidivism,” April 26, 2022.

Author: KSC

## News

### Secretary Cardona Testifies on Hill about FY 2023 Budget Request

Secretary of Education Miguel Cardona testified in front of the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies regarding the Biden administration’s request for fiscal year (FY) 2023 funding – the federal fiscal year that begins on October 1, 2022.

The purpose of the hearing was for lawmakers to question Cardona on the requests made for FY 2023 and gather more information. Lawmakers also questioned Cardona on general policy and practices of the U.S. Department of Education as well, including upcoming rulemaking. During his opening statement, Cardona highlighted the administration’s request for a drastic increase in Title I funding under the Elementary and Secondary Education Act and an increase in the maximum Pell Grant amount. In addition, Cardona noted the administration’s focus on equity in education and requests for funding that would expand access to postsecondary education, help with educator staffing shortages, and build more career pathways for students. Finally, Cardona explained to the subcommittee that there are “artificial cuts” in the FY 2023 budget request compared to the final FY 2022 funding levels that were not finalized until March of this year. Those cuts were unintentional as the administration was required to base its FY 2023 funding request off of the FY 2021 funding levels, and the FY 2022 funding levels were increased higher than expected for some programs. The administration does not intend to seek or support a cut for the programs impacted, including State grants for career and technical education programs.

Lawmakers questioned Cardona on other issues outside of FY 2023 funding during the hearing as well, including the timing for the expected proposed rule on Title IX enforcement, the administration’s engagement with for-profit and proprietary schools, and some districts’ use of federal stimulus funding. Cardona told the subcommittee that the proposed Title IX rule is expected in May – about one month later than originally planned. In addition, Representative Herrera-Beutler (R-WA) questioned Cardona on the administration’s “anti-proprietary school ideology,” acknowledging that there have been bad actors but that there are poor performing public schools as well. Herrera-Beutler also said that proprietary schools in her district have felt they have not been heard on issues part of upcoming rulemaking on Title IV eligibility. Cardona committed to ensuring proprietary schools are consulted as part of the rulemaking process and noted his support for alternative career pathways, including short-term programs.

Representative Ben Cline (R-VA) questioned Cardona on how some districts have been using federal stimulus dollars, naming specific projects that certain districts across the country have used funding for, including upgrades to athletic facilities and fields. Cline also mentioned a 2021 Government Accountability Office report that found issues with ED’s collection of data surrounding stimulus spending and asked Cardona what type of oversight ED is implementing. Cardona said that ED modified its data collection following that GAO report and described technical assistance efforts and meetings ED has engaged in to ensure schools are spending funds appropriately.

Following these informational hearings, the subcommittee will work to draft language for the Labor, Health and Human Services, Education funding bill, but first, top House appropriators must determine top-line funding levels for the defense and non-defense spending categories, which they hope to accomplish within the next two weeks.

Resources:

Jennifer Scholtes, “Appropriators aim to strike fiscal 2023 total within ‘next couple of weeks,” *Politico*, April 28, 2022.

Author: KSC

### Borrowers Sue Cardona over ED Delay on Borrower Defense Claims

A group of student loan borrowers filed a class action lawsuit against Secretary of Education Miguel Cardona over the U.S. Department of Education’s (ED) failure to rule on the borrowers’ loan forgiveness claims submitted to ED more than six years ago. After public scrutiny, the Biden administration pledged to address issues with the student loan program, including those stemming from the predatory practices of certain for-profit colleges and the remedies available under the borrower defense to repayment program, yet progress has been slow.

The borrowers in the lawsuit are former students of for-profit college Kaplan Career Institute, who sought to have their loans forgiven under the borrower defense program in 2016 when Massachusetts Attorney General Maura Healey filed a group borrower defense application with ED on the borrowers’ behalf. Under the borrower defense to repayment program, borrowers may be eligible to have their loans discharged if their school misled them or engaged in other misconduct in violation of certain State laws. According to the lawsuit, ED and Secretary Cardona violated the Administrative Procedure Act by failing to issue a decision on the application despite receiving it in 2016.

Counsel for the borrowers include the National Student Legal Defense Network, Legal Services Center of Harvard Law School, and the National Consumer Law Center. A spokesperson for Student Defense commented, “while these claims didn’t originate under this administration, the agency has had ample opportunity under Secretary Cardona’s leadership to resolve this glaring issue.” ED did not comment on the litigation but a spokesperson did point out that the Biden administration has “delivered more borrower defense relief than any prior administration and [the Department] is working to fix this program after four years of inaction.”

Resources:

Michael Stratford, “Cardona faces lawsuit over ‘illegal delay’ in deciding student loan fraud claims,” *Politico Pro*, April 26, 2022.

Author: ASB

### Supreme Court Hears School Prayer Case

On Monday the U.S. Supreme Court heard arguments in the case of *Kennedy v. Bremerton School District*, which has the potential to re-shape how and when prayer is allowed in public schools. In this case, a high school assistant football coach was fired by the school district when he refused to stop praying audibly on the 50-yard line after games.

The school district and parents pointed out that Kennedy had been asked to pray privately and has been offered space to do so, and that the prayer often felt coercive – that students were concerned about whether they would get playing time if they did not choose to join. But Kennedy said that he was simply exercising his First Amendment rights to express his devotion. During the disagreement with the school district, he appeared on *Good Morning America* and at times his supporters crowded the field after games, creating what the district described as a “media circus” that led to an unsafe situation for students and others who were pushed or knocked over.

Current law prohibits an exercise of religion by a public school employee that pressures students or appears to constitute an endorsement by the school or school district. In oral argument, many of the justices seemed sympathetic to the coach, but it is unclear how exactly they will find wiggle room in the current standard. In a case on school funding last year, the Court took an expansive view of parental rights to use public funds to exercise their religion, saying that individual exercise took precedence over the State’s desire to limit its entanglement with religious practice. A decision is expected later this year.

Author: JCM

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