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**The Federal Update for May 26, 2023**

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

Re: Federal Update

Date: May 26, 2023

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## Legislation and Guidance

### Debt Limit Negotiations Continue as Deadline Approaches

The White House and Congressional leaders have still not reached a deal to increase the debt limit ahead of the expected deadline of June 1. President Biden met with Speaker of the House Kevin McCarthy (R-CA) earlier this week and reported that they are “making progress” on negotiations.

Actual specifics of what may be included in a final deal have not been provided by the White House and Congressional leaders, but some reports have indicated that raising the debt ceiling through the 2024 election, spending caps for future fiscal years, and the clawing back of certain unobligated COVID-19 relief funds and Internal Revenue Service funding have been a part of the discussions this week. Remaining sticking points in the negotiations include a Republican push to increase work requirements for certain federal benefit programs, as well as whether to include energy permitting reform as part of the deal. With House conservatives, including members of the Freedom Caucus, expressing opposition to compromise measures, it is possible that significant Democratic support will be needed to pass any debt limit deal in the House.

House lawmakers have left Washington for the Memorial Day recess, which extends through next week; however, Speaker McCarthy has told members to be prepared to return to Washington for a vote should a deal be reached in the coming days.

The U.S. Treasury has warned that the U.S. could run out of money to pay its debts as soon as June 1 – less than one week away.

Resources:

Olivia Beavers and Sarah Ferris, “House conservatives blanch at leaked details of McCarthy-Biden debt talks,” *Politico*, May 25, 2023.

Rachel Siegel, Paul Kane, and Leigh Ann Caldwell, “Debt ceiling talks are ‘closer,’ but still haven’t reached a deal,” *Washington Post*, May 25, 2023.

Author: KSC

### House Passes Resolution to Undo Student Loan Relief

In a 218-203 vote late Wednesday, the House passed a resolution to overturn the President’s sweeping student loan debt relief plan.

The resolution, filed pursuant to the Congressional Review Act (CRA), will only go into effect if it is passed by the Senate and signed by the President. Lawmakers in the Senate have expressed concern about the legislation and the White House has pledged to veto it. Congressional Republicans had sought an opinion earlier this year from the Government Accountability Office as to whether the student loan forgiveness plan was in fact a regulatory action subject to the recission powers under the CRA. In public statements, lawmakers criticized the plan as “too expensive” and shifting the burden to taxpayers who had not attended college, while others noted that Payroll Protection Plan (PPP) loans of much greater scale were forgiven without similar concerns.

The CRA allows Congress to pass a resolution of disapproval within 60 legislative days of a final regulatory action. If the resolution is passed by both chambers and signed by the President, it not only rescinds the rule in question, it also prevents the agency from ever issuing “substantially similar” rules on the same legislative text.

Even if passed, lawmakers disagree on the potential impact of the resolution. The non-partisan Congressional Research Service suggested that the resolution might be interpreted to require the U.S. Department of Education to reinstate payments and loan forgiveness already provided under the Public Service Loan Forgiveness program, but Congressional Republicans say those concerns are overblown, and that the rescission would not be applied retroactively.

But the resolution may be rendered moot by a case pending before the Supreme Court which would decide whether sweeping student loan forgiveness is within the President’s administrative powers. A decision in that lawsuit is expected before the end of June.

Resources:  
Michael Stratford, “Why Republicans want to repeal Biden’s student debt relief now,” *Politico*, May 23, 2023.

Author: JCM

### White House Announces Plan to Address Youth Mental Health

On Tuesday the White House posted an announcement showcasing a number of steps that the administration plans to take around youth mental health. The statement cites increasing concern among parents about their children’s mental health and the rise in the number of children and adolescents with anxiety and depression.

The statement expressed particular concern about the impact of social media platforms given their sweeping data collection policies and potential to deliver harmful content. Among the actions previewed are a plan to create a Task Force on Kids Online Health and Safety. This group will recommend measures for mitigating harms as well as best practices and technical standards for evaluation of the impact on mental health.

The U.S. Department of Education (ED) will be instructed to begin rulemaking under the Family Educational Rights and Privacy Act to increase student privacy and “address concerns about the monetization of that data by commercial entities,” including apps for education. Following publication of final FERPA regulations, ED will update its model FERPA notification and consent forms and will be directed to provide best practices guidance to schools and districts regarding FERPA and contracting with third-party vendors. ED will also issue resources later this year on best practices for school districts on the use of internet-enabled devices and services in elementary and secondary schools to address concerns about digital health, safety, and citizenship practices, academic outcomes, and digital literacy skills and habits.

More on this announcement is [available here](https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/23/fact-sheet-biden-harris-administration-announces-actions-to-protect-youth-mental-health-safety-privacy-online/).

Author: JCM

### 2023 OMB Compliance Supplement Includes Education Updates

The Office of Management and Budget (OMB) released the 2023 Compliance Supplement last Friday, which is the tool auditors are required to use when conducting single audits. The U.S. Department of Education (ED) selects up to seven compliance areas for auditors to test for each federal education program, including requirements such as allowable uses of funds, cash management, and equipment and real property, among others.

The 2023 supplement includes some additions compared to the 2022 Compliance Supplement. OMB added language surrounding the applicability of the Build America, Buy America Act (BABAA) to ED programs, which was implemented last year and requires certain federal programs to use materials produced in the United States for infrastructure projects. The supplement includes a link to a list of ED programs that BABAA applies to generally. For purposes of the 2023 Compliance Supplement, the BABAA requirements are applicable to the Charter School Program and the Individuals with Disabilities Education Act Part B, C, and preschool programs as procurement is one of the selected compliance areas for those programs for 2023. However, grantees should review the ED list of programs to which BABAA applies to ensure compliance in other federal education programs as well, whether BABAA will be tested by auditors for the 2023 audit year or not. [The BABAA list is available here and will continue to be updated by ED as necessary](https://www2.ed.gov/about/offices/list/ofo/oaga/infrastructure-programs-list.pdf).

The supplement also includes updates to reflect new guidance issued under some COVID-19 relief programs last year. OMB added language under the ESSER and GEER section to note an updated question in the ESSER/GEER FAQs on uses of funds issued in December 2022, which allows “under very limited circumstances services to extend for a reasonable period beyond the end of the obligation and liquidation period.”

OMB also included language reflecting guidance permitting a State to apply Coronavirus Relief Funds under the Coronavirus Aid, Relief, and Economic Security Act and the Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act that are spent on elementary, secondary, or higher education as State support when calculating maintenance of effort for COVID-19 relief programs. However, the same flexibility does not apply to maintenance of effort requirements under other federal education programs, like the Elementary and Secondary Education Act.

Grantees should review the 2023 Compliance Supplement to be aware of the compliance areas that will be tested for each of the programs they administer in the coming year. The compliance areas vary from program to program but all selected compliance areas are the same requirements selected by ED in 2022.

[The ED section of the 2023 Compliance Supplement is available here](https://www.whitehouse.gov/wp-content/uploads/2023/05/Part-4-Department-of-Education.pdf).

Author: KSC

### ED Offers Dear Colleague on Antisemitism

The U.S. Department of Education (ED) sent out a “Dear Colleague” letter to colleges regarding the recent rise in antisemitism.  The letter references a fact sheet published earlier this year on “Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics,” which includes guidance on discrimination based on religious identity.

The letter notes that Title VI of the Civil Rights Act protects students who are Jewish, or may be perceived to be Jewish, from discriminatory conduct.  This conduct can include ethnic or ancestral slurs; harassment based on how a student looks, dresses, or speaks in ways linked to ethnicity or ancestry (e.g., skin color, religious attire, language spoken); or stereotypes based on perceived shared ancestral or ethnic characteristics.  Schools are instructed to “take immediate and appropriate action to respond” where such harassment creates a hostile environment that interferes with or limits a student’s participation in services or activities offered by the schools.

The letter links a number of additional resources on discrimination and harassment based on ethnicity and religious identity generally, as well as antisemitism in particular.

The letter [is available here](https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf?utm_source=Iterable&utm_medium=email&utm_campaign=campaign_6912623_nl_Afternoon-Update_date_20230525&cid=pm&source=ams&sourceid=).

Author: JCM

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