Header: The BruMan Group, PLLC. Attorneys At Law. 1023 15th Street NW, Suite 500. Washington, DC 20005. Phone (202) 965-3652. Fax (202) 965-8913. bruman@bruman.com. www.bruman.com

**The Federal Update for June 9, 2023**

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

Re: Federal Update

Date: June 9, 2023

[Legislation and Guidance 1](#_Toc137126532)

[ED Assures States Remaining Stimulus Funds Protected 1](#_Toc137126533)

[Final Title I Equitable Services Guidance Published 2](#_Toc137126534)

[President Vetoes Student Loan Resolution 3](#_Toc137126535)

[ED Publishes Draft 21st CCLC Guidance 3](#_Toc137126536)

[Reports 4](#_Toc137126537)

[ED OIG Publishes Semiannual Report to Congress 4](#_Toc137126538)

## Legislation and Guidance

### ED Assures States Remaining Stimulus Funds Protected

In a letter sent to State chiefs earlier this week, Acting Assistant Secretary for Elementary and Secondary Education James Lane offered reassurance that stimulus funds allocated to States would not be included in the recissions of the debt ceiling legislation.

The Fiscal Responsibility Act of 2023, signed into law by the President last week, rescinds unobligated balances held by the federal government in a number of programs including the education stimulus programs under the American Rescue Plan (ARP). However, the letter from the U.S. Department of Education (ED) said that all funds under the Elementary and Secondary School Emergency Relief Fund (ESSER), Emergency Assistance to Nonpublic Schools (EANS), Governor’s Education Emergency Relief Funds (GEER), and Homeless Children and Youth (ARP-HCY) funds are considered fully obligated by the federal government and are therefore not subject to recission. “States and subgrantees should continue to spend down these resources urgently and wisely in accordance with approved State and local plans and statutory timelines for spending,” Lane wrote. ED had previously said that HEERF funds committed to specific institutions would also not be clawed back.

Recissions will affect some ARP funds not yet obligated by ED, including funding for the Institute of Education Sciences and Student Financial Aid administration.

Author: JCM

### Final Title I Equitable Services Guidance Published

The U.S. Department of Education (ED) has published a final version of its updated guidance on providing equitable services under Title I of the Elementary and Secondary Education Act (ESEA). This is the final version of guidance updates originally issued in November of last year and has been updated to add more context to – but not change ED’s position on – the calculation of the private school proportionate share through surveys and other means.

Under the final guidance, as under the draft, districts who wish to use survey responses to calculate the proportionate share must ensure that the sample of responses collected is “representative” of the district and the students attending private school. While the updated guidance allows districts to presume that any survey data is representative, it also allows private schools to challenge that assertion during the consultation process. Following a challenge, the LEA must engage in a review of the data and share its conclusions with private schools. If the sample is found not to be representative of the population, then the district must supplement it with data from other sources.

This new ability to challenge the representative nature of a sample means that LEAs must engage in ongoing consultation with multiple instances of contact and feedback if they plan to use survey data. ED says that districts must consult with participating non-public schools on the choice of data being used to calculate proportionate share in a way that discusses all allowable data sources under Title I and allows for meaningful feedback “before the LEA makes any decision that affects the opportunities of private school children.”

The updated guidance, like its predecessor, does not define what kind of sample it considers to be adequately representative. However, in two examples it suggests that a sample of 300 out of 400 students is representative, while a sample of 25 out of 100 students is not. The guidance does suggest that in gauging whether survey data is representative, a district “consider the degree to which respondents are similar to non-respondents such as by using neighborhood or Title I public school attendance area characteristics.” The new version of the guidance also eliminates a sentence stating that “[r]igorous statistical analyses may not be necessary to justify the representativeness of the sample.”

Finally, the updated guidance does not acknowledge concerns expressed by stakeholders that survey data is often used as a fallback when other reliable data sources are not available and therefore cannot be supplemented, instead suggesting that private schools encourage families to respond to surveys by writing a “cover note” or including the surveys in a registration packet.

The [final version of this guidance](https://oese.ed.gov/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf) is available here.

Author: JCM

### President Vetoes Student Loan Resolution

On Wednesday President Biden vetoed legislation passed under the Congressional Review Act that would have repealed his plan to provide up to $20,000 of student loan forgiveness for borrowers.

The resolution passed the House and Senate last week and claimed that the plan would be too costly and unfair to Americans who didn’t attend college to bear a share of the cost of forgiveness via federal income taxes. But the President – who had promised to veto the bill if it is passed by Congress – said he would “not… back down on my efforts to help tens of millions of working- and middle-class families.”

Under the Congressional Review Act, Congress can pass resolutions seeking the recission of federal regulations promulgated by the administration within the past 60 legislative days. However, such resolutions have to be signed by the President to take effect. The administration is also awaiting a decision from the U.S. Supreme Court as to whether the President has the authority to offer such forgiveness under the 2003 Higher Education Relief Opportunities for Students (HEROES) Act, or whether it is simply too big a financial question for the executive to answer without explicit Congressional authority. That decision could come any day between now and the end of June.

Author: JCM

### ED Publishes Draft 21st CCLC Guidance

The U.S. Department of Education (ED) published draft guidance last month on the 21st Century Community Learning Centers (21st CCLC) program under Title IV-B of the Elementary and Secondary Education Act. The new frequently asked questions (FAQs) supersede prior guidance on the program, which was issued in 2003.

While many of the FAQs in the draft guidance remain the same as the 2003 guidance, some questions have been removed or added to reflect current law, as the prior guidance was issued prior to the 2015 reauthorization of the Elementary and Secondary Education Act and the restriction on the use of funding for weapons or weapons training passed through the Bipartisan Safer Communities Act in June of 2022. The draft guidance provides an overview of the 21st CCLC program, covers State allocations and State responsibilities, including fiscal flexibilities such as transferability and consolidation of funds, addresses the State competitive grant process and allowable local uses of funds, and provides information on State and local evaluation and monitoring requirements. The draft guidance is more streamlined than the 2003 guidance and includes appropriate updates based on the 2015 ESEA reauthorization, including accurate citations and updated language to reflect changes in the law, such as the move from “scientifically based research” to “evidence-based interventions.”

Stakeholders may submit comments to ED on the draft guidance by June 16 to [OESE.feedback@ed.gov](mailto:OESE.feedback@ed.gov). ED notes that it will not respond directly to all comments received but will consider stakeholder feedback in finalizing the guidance and issue any amendments as appropriate.

[The draft 21st CCLC guidance is available here](https://oese.ed.gov/files/2023/05/DRAFT-21st-cclc-non-reg-guidance-for-publication.pdf).

Author: KSC

## Reports

### ED OIG Publishes Semiannual Report to Congress

The U.S. Department of Education Office of Inspector General (ED OIG) released its Semiannual Report to Congress this month. The report highlights ED OIG’s audits and investigations from October 1, 2022 through March 31, 2023 and covers actions related to pandemic relief, federal student aid programs, and ED management and operations.

ED OIG reports that their audits detected over $2.7 million in questioned and unsupported costs. The report notes a recent audit of the University of Cincinnati’s use of Higher Education Emergency Relief Funds (HEERF) grant funds, in which ED OIG found that the University did not fully comply with cash management and reporting requirements and needed to enhance its allowability review and documentation processes. Additionally, the report discussed an inspection of ED’s Experimental Sites Initiative. The inspection found that ED was not submitting biannual reports to Congress, as required by the Higher Education Act.

The report notes that ED OIG performed 17 quality control and desk reviews of audits submitted by funding recipients. ED OIG also issued a new audit guide for for-profit schools and third-party servicers that administer Title IV programs.

Further, ED OIG closed 32 investigations of fraud and corruption, which led to the securing of over $41.92 million in settlements, fines, and recoveries. The report highlights some of those investigations. In one closed investigation, ED OIG worked to prosecute a U.S. Army soldier who charged money in exchange for submitting false Veterans Affairs certifications for disability to ED, which discharged student loans. The soldier was sentenced to three and a half years in prison and was ordered to pay more than $3.6 million in restitution.

Another case involved a man who coordinated a $3 million student aid fraud ring by using the identities of over 180 people to apply for admission and receive student aid from Baton Rouge Community College. He was sentenced to 11 years in prison. In another investigation, former administrators at the Apex School of Theology were sentenced to prison for engaging in a $12 million student aid fraud scam, where the administrators told recruits to enroll in the school so that they could split student aid award balances with them. ED OIG closed an investigation, which resulted in prison time for a former financial aid officer at Manatee Technical College. The financial aid officer stole $300,000 from the school by convincing students to return unused Pell Grant funds to the school by money order, which she would deposit into her bank account.

In the report, ED OIG restates their commitment to combating fraud, waste and abuse, and ensuring that federal funds are used efficiently and effectively.

[The semiannual report can be viewed here.](https://www2.ed.gov/about/offices/list/oig/ed-oig-sar-86.pdf)

Author: BNT

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of The Bruman Group, PLLC’s virtual trainings. Topics cover a range of issues, grants management, COVID-19 relief programs, the Elementary and Secondary Education Act, and more. To view all upcoming virtual training topics and to register, visit* [www.bruman.com/training-and-recordings/](http://www.bruman.com/training-and-recordings/)*.*

***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.***

© The Bruman Group, PLLC 2023

Contributors: Julia Martin, Kelly Christiansen, Brandi Tennant

Posted by the California Department of Education, June 2023  
[www.bruman.com](http://www.bruman.com)