The Bruman Group, PLLC logo

1120 20th Street, N.W., Suite 740

Washington, D.C. 20036

phone: 202.965.3652

fax: 202.965.8913

[bruman@bruman.com](mailto:bruman@bruman.com)

[www.bruman.com](http://www.bruman.com)

# The Federal Update for August 25, 2023

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

Re: Federal Update

Date: August 25, 2023

[Legislation and Guidance 1](#_Toc143853875)

[OCR Issues Guidance on Race and School Programming 1](#_Toc143853876)

[House Bill Would Halt Hiring at ED 3](#_Toc143853877)

[News 3](#_Toc143853878)

[Administration Offers New Details on SAVE Repayment Plan 3](#_Toc143853879)

[OMB Establishes Council on Federal Financial Assistance 4](#_Toc143853880)

*Congress is currently in recess and will return to session following the Labor Day holiday.*

## Legislation and Guidance

### OCR Issues Guidance on Race and School Programming

The U.S. Department of Education’s (ED’s) Office for Civil Rights (OCR) released a “Dear Colleague” letter this week on race and school programming which provides clarification on schools’ responsibilities under Title VI of the Civil Rights Act. OCR released the guidance in response to an increase in civil rights complaints and requests for technical assistance from schools on developing curricula and implementing activities to promote racially inclusive school communities.

The guidance reminds grantees that ED “does not mandate, direct, or control curricula except to the extent authorized by law,” but that OCR may examine schools’ actions or choices related to curricula if those actions are relevant to a complaint submitted under Title VI. The guidance says that school activities that treat students differently based on their race are subject to “strict scrutiny,” as established by Supreme Court precedent, meaning that the school is required to demonstrate that the use of students’ race is “‘narrowly tailored’ to further a ‘compelling’ interest,’” or the school may be found in violation of Title VI. OCR explains the three-part test it uses to determine whether a school has violated Title VI with respect to race, including whether the school treats a group of students of one race differently than similarly situated students of another race, whether the school can demonstrate a “legitimate, nondiscriminatory” reason for treating those students differently, and whether the reason for disparate treatment provided by the school is only a “pretext for discrimination.”

OCR offers a number of example situations in which schools may be found to have violated Title VI, including the creation of and failure to take action to eliminate a hostile environment. Schools are required to “(1) end the harassment, (2) eliminate any hostile environment and its effects, and (3) prevent the harassment from recurring” in a timely and effective manner. OCR says that a single incident, in most cases, would not result in a Title VI violation but that in some cases a particularly severe incident may be enough establish the existence of a racially hostile environment requiring action.

With regard to curriculum, OCR says that it “does not involve itself in complaints based on the content of a school’s academic course materials or related discussions absent allegations of discrimination.” The guidance provides hypothetical examples of complaints and how OCR may respond, including a complaint regarding a requirement for students to take a Mexican-American history course from a parent who claims it is offensive to non-Mexican-American students who do not want to take the class. In that example, OCR says it may decline to open an investigation since students of all races are treated the same in being required to take the class. In another example, OCR says it may decline to open an investigation if it were to receive a complaint about a school requiring students to read a book about racial discrimination or racial justice.

School cannot separate students based on race even if the programming provided to the different groups of students is the same. While schools may divide students into groups for small discussions related to the curriculum, the school cannot assign groups based on race or require or deny participation based on race. The guidance also says that schools cannot use curricula that “promotes hateful or demeaning racial stereotypes or violence toward people of a particular race.” The use of such curricula may create a hostile environment that would violate Title VI.

OCR also tells schools that they are permitted to hold discussions and listening sessions on the topic of race and receive student input for creating an inclusive school environment but that those sessions must be open to all students, regardless of race. Finally, OCR says that generally Title VI does not prohibit schools from “sponsoring or recognizing extracurricular activities and spaces with race-related themes,” but those activities must be open to all students.

The letter follows the U.S. Supreme Court decision earlier this summer on the use of race in college admissions, and OCR cites to the recent decision throughout the letter. The letter also provide hypothetical examples of situations in which OCR may or may not engage in an investigation based on complaints received.

[The full letter is available here](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf).

Author: KSC

### House Bill Would Halt Hiring at ED

Congressman Aaron Bean (R-FL), Chairman of the House Subcommittee on Early Childhood, Secondary, and Elementary Education, introduced the “Fostering Resource Efficiency in Education by Zero Employment Act” this month. The bill, known as the “FREEZE Act,” would prevent new appointments and suspend the creation of new positions at the U.S. Department of Education (ED). The bill would also rescind any funding for salaries or expenses that would be unused because of the bill.

The FREEZE Act is sponsored by other House Republicans on the Education and Workforce Committee, including Representatives Mary Miller (R-IL) and Nathanial Moran (R-TX). The bill signals the party’s position that education policy decisions should be made at the State and local government level. This allows parents to be at the center of their student’s education, the lawmakers say.

Republicans have argued that ED should only be minimally involved in policy, with some even calling for the abolishment of ED. Earlier this year, Republican presidential candidate and Governor of Florida, Ron DeSantis, said that if elected, he would reduce the size of the federal government by abolishing four federal agencies, including ED. Other Republican presidential primary candidates have stated their support for eliminating ED as well.

The legislative proposal comes as ED is dealing with staffing shortages. Many career employees left under the prior administration and now the ED is struggling to implement major policy goals and execute regulatory changes, including redesigning the Free Application for Federal Student Aid form and restarting student loan payments.

While the FREEZE Act symbolizes the Republican antipathy toward ED, the bill is unlikely to pass both chambers of Congress, as it would not garner enough support in the Democrat-controlled Senate.

[The text of the bill can be found here.](https://bean.house.gov/sites/evo-subsites/bean.house.gov/files/evo-media-document/aaron-bean-signed-beanfl_015.pdf)

Resources:

Jeremy Bauer-Wolf, “House Republicans’ bill would freeze Education Department hiring,” *K-12 Dive*, August 21, 2023.

Zoe Richards, “Ron DeSantis says he would eliminate four federal agencies if elected president,” *NBC News*, June 28, 2023.

Author: BNT

## News

### Administration Offers New Details on SAVE Repayment Plan

This week the Biden administration released more information on its new student loan repayment plan, known as Saving on a Valuable Education (SAVE). The plan will lower monthly payments beyond the current income-driven repayment by raising the income level for $0 payments to 225 percent of the federal poverty line. It also reduces the rate borrowers must pay each month from 10 percent to 5 percent of discretionary income. Additionally, interest not covered by a borrower’s monthly payment will not be capitalized to the loan balance, so long as the borrower meets their minimum payment each month. Borrowers will be automatically recertified for the program starting in July of 2024, so they will not have to go through an annual certification process.

The White House said in a call this week that borrowers who apply for the program will have their application processed within about six weeks, with some benefits starting now – like the lower threshold and the changes to interest capitalization – and some starting in July of 2024.

In addition to the repayment plan, the administration is working on a rulemaking under the Higher Education Act that would create a new student loan forgiveness system after the U.S. Supreme Court struck down the previous plan, saying that the plan exceeded the administration’s authority under the 2003 HEROES Act. Ultimately, both that plan and this income-driven repayment system are likely to be tested in the courts.

[More information on the SAVE plan is here.](https://studentaid.gov/announcements-events/save-plan)

Author: JCM

### OMB Establishes Council on Federal Financial Assistance

The Office of Management and Budget (OMB) issued a memorandum earlier this month that announces the establishment of a Council on Federal Financial Assistance, or COFFA, which will serve as an oversight body for federal grants.

The memo states that the Council is based on similar government entities created in the 1990s, including the Chief Financial Officers Council and the Chief Acquisition Officers Council. According to the OMB, COFFA will be responsible for “providing strategic direction, policy recommendations, and priority-setting for other Government-wide grant-related activities.” The Council is also intended to reduce administrative burden across the federal government through its leadership and establishment of promising practices.

COFFA will include representatives from the 24 agencies under the Chief Financial Officers Act, including the U.S. Department of Education. The representatives are required to be senior policy officials who are responsible for managing and implementing federal financial assistance. OMB’s Deputy Director for Management will head the Council in partnership with an agency representative but may designate responsibility to the OMB Controller. The first agency co-chair will be the U.S. Department of Health and Human Services representative. Agency co-chairs will serve a two-year term and be selected by the Council members.

[The OMB memo on the COFFA is available here](https://www.whitehouse.gov/wp-content/uploads/2023/08/M-23-19-Establishment-of-the-Council-on-Federal-Financial-Assistance.pdf).

Author: KSC

***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, September 2023  
[www.bruman.com](http://www.bruman.com)