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# The Federal Update for September 29, 2023

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

Re: Federal Update

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## Legislation and Guidance

### No Funding Agreement as Start of FY 2024 Approaches

Congress has yet to pass final appropriations or a short-term funding measure, known as a continuing resolution or CR, as the start of fiscal year (FY) 2024 approaches on Sunday, significantly increasing the risk of a government shutdown.

Division among Republicans in the House has led to challenges in reaching an agreement that can pass muster in that chamber. Meanwhile, the Senate advanced a bipartisan short-term funding bill on Thursday that would keep the government open and funded at FY 2023 levels through November 17 and provide $6 billion in aid for Ukraine. A final Senate vote on that legislation is forthcoming. That bill is unlikely to pass the House in its current form, however, as conservative House Republicans oppose providing any additional aid to Ukraine. A group of Republican senators are working on a possible amendment to the stopgap bill to provide funding for border security, which may gain more support from House Republicans.

The House is considering its own stopgap bill Friday that includes funding for border security, but it remains unclear if the bill has enough votes for final passage.

Due to procedural requirements in the Senate, if all senators do not agree to expedite any stopgap legislation, a bill will not be passed ahead of the Sunday deadline, resulting in a short government shutdown, or longer, should lawmakers in the House and Senate fail to reach an agreement.

While a short-term government shutdown will not have a major impact on U.S. Department of Education (ED) grantees, a prolonged closure could lead to delays in the flow of funding to States, colleges, and school districts, as well as delays in reimbursement for child nutrition programs administered by the U.S. Department of Agriculture. In addition, most ED staff will be furloughed during the shutdown, so grantees should expect slower responses to technical assistance inquiries and other related operations.

Author: KSC

### OMB Issues Proposed Revisions to Uniform Grant Guidance

The Office of Management and Budget will publish proposed revisions to the Uniform Grant Guidance (UGG) on October 5. The UGG is a set of regulations that all recipients of federal funding, including recipients of funding from the U.S. Department of Education, must comply with. The rules were last updated in 2020.

Updates to the UGG include an increase on the threshold of federal funding that triggers a single audit from $750,000 to one million, an increase in the equipment value threshold that allows a grantee to retain the item during the disposition process from $5,000 to $10,000, and an increase in the de minimis indirect cost rate from 10 percent to 15 percent. In addition, changes to procurement include clarification that “small purchases” and “simplified acquisition” are the same, removal of requirement that recipients open sealed bids in public, and elimination of the prohibition on using geographic preferences in competitive procurement, among others. The updates include new and modified definitions as well, including removing prior written approval requirements for several items.

The current updates are in proposed form and will be open for public comment until early November. OMB will be required to review and take into consideration all stakeholder feedback before publishing the final rule, which could be released as early as December of this year.

The Bruman Group, PLLC will host a virtual training on October 19 to review the proposed changes. Additional information and registration will be available on our website at [www.bruman.com/training-and-recordings](http://www.bruman.com/training-and-recordings).

[The unofficial version of the UGG updates is available here](https://public-inspection.federalregister.gov/2023-21078.pdf).

Author: KSC

### USDA Publishes Final Rule on CEP Expansion

Earlier this week the U.S. Department of Agriculture (USDA) published a final rule on the Community Eligibility Provision (CEP) which would expand the ability to offer universal free meals to a greater number of schools. The new requirements would set eligibility to participate in the program at 25 percent of “identified students” – that is, students who are identified as eligible for free meals through direct certification or other means – and would require that States and districts notify districts or schools with identified students percentages of 15 percent or more (down from 30 percent) that they may be eligible in the following school year.

Additionally, this modifies the requirements for schools to exit CEP, allowing them to have a fifth year or “grace year” to exit a CEP cycle so long as they have at least 15 percent identified students, down from the previous requirement of 25 percent.

Schools and districts that participate in CEP serve free meals to all students and receive reimbursement based on their identified students percentage and a multiplier – currently set at 1.6. While the schools and districts newly eligible for CEP will not receive enough in reimbursements to cover all their costs, it may decrease the burden on State budgets in the growing number of States that already guarantee free school meals.

USDA said in a press release that it expects the new rule to open the program up to about 3,000 more school districts. The rule will go into effect on October 26, but USDA has not indicated whether it will allow schools and districts to enter into CEP mid-year – usually, entities make an “election” in the summer before the school year begins based on the student population and the financing available.

[The final rule is available here](https://www.federalregister.gov/documents/2023/09/26/2023-20294/child-nutrition-programs-community-eligibility-provision-increasing-options-for-schools).

Author: JCM

### ED Publishes New Gainful Employment Rule

On Thursday, the U.S. Department of Education (ED) published its final “gainful employment” rule, reviving an Obama-era policy which requires recipients of federal higher education funding to meet certain performance standards.

The new rule will go into effect in July of 2024 and would require all programs at for-profit colleges, as well as certificate programs at private-nonprofit and public colleges, to meet two criteria to receive federal student aid. First, programs would have to show that graduates’ student loan obligations are less than 8 percent of their annual income or 20 percent of discretionary income. In the second, programs would need to show that the graduates earn more than the typical high school graduate – typically around $25,000, depending on the State. Institutions must report on their status each year, and if they fail both requirements for two of three consecutive years, they will no longer be eligible to receive federal student aid.

Colleges would also require programs subject to the rule to disclose to students when they are in a low-earning major in an effort ED calls “financial-value transparency.”

ED officials said they expect about 1,700 programs, including 400 graduate programs, to fail the new standards. In a press release, Secretary of Education Miguel Cardona said that the new rule is an attempt to hold institutions accountable and “mak[e] sure that students know, before they take out loans, when college programs have a history of leaving graduates with high debts, low earnings, and poor career prospects.”

Advocates of for-profit institutions criticized the rulemaking process as “rushed” and complained that it fails to protect students. Representative Virginia Foxx (R-NC) called the rule a “partisan witch hunt” that unfairly “attacks” proprietary and for-profit institutions.

Author: JCM

### Congress Passes Bill to Protect Hunting and Archery Programs

This week, Congress passed H.R. 5110 - Protecting Hunting Heritage and Education Act. The bill passed almost unanimously in both chambers, with the votes in both chambers taking place less than 24 hours apart. The bill was introduced last month by Representative Mark Green (R-TN) as a response to informal guidance from the U.S. Department of Education (ED) to a State, which said that Elementary and Secondary Education Act (ESEA) funding could not be used for hunting or archery programs.

The question came in response to an ESEA amendment made by the Bipartisan Safer Communities Act in June 2022. Section 8526 of ESEA was amended to state that ESEA funds could not be used “for the provision to any person of a dangerous weapon” and uses an existing federal definition for “dangerous weapon.” A frequently asked questions guidance document published by ED in April did not provide detailed information on the applicability of the new language despite a broad definition of “dangerous weapons,” except noting that firearms and firearms training purchases would fall under the new prohibition. In separate emails, however, an ED official told a State that since hunting and archery programs use “technically” dangerous weapons, they could not be funded by ESEA.

In response to ED’s informal guidance, many members of Congress wrote letters to ED encouraging the reversal of its interpretation. Letters came from both Democrats and Republicans, including Senator Joe Manchin (D-WV) and Representative Virginia Foxx (R-NC). Lawmakers argued that the broad definition of “dangerous weapon” would include culinary programs or materials for fencing programs and that the intention of the provision was more limited to preventing the purchase of firearms.

The Protecting Hunting Heritage and Education Act amends Section 8526(7) of ESEA to clarify that the prohibition on the use of funds for dangerous weapons does not apply to using funds for providing students with educational instruction, such as in “archery, hunting, other shooting sports, or culinary arts.”

The bill will now be sent to President Biden, who is expected to sign the bill into law.

[The full text of the bill can be found here.](https://www.congress.gov/bill/118th-congress/house-bill/5110/text?s=1&r=1)

Author: BNT

## Reports

### ED Releases Report on Higher Ed Diversity Strategies

The U.S. Department of Education (ED) released a report on Thursday that was crafted in response to the U.S. Supreme Court decision this summer that determined affirmative action programs at colleges and universities are unconstitutional. The report includes strategies for institutions of higher education (IHEs) to ensure diversity and opportunities for disadvantaged students in light of the elimination of affirmative action programs. ED examined peer-reviewed research and best practices at IHEs in developing the resource.

The resource aligns with guidance released by ED earlier this year outlining the actions IHEs can lawfully take to establish and maintain diverse student bodies and practices, providing specific examples of allowable activities and programs. The resource provides recommend activities and programs for targeted recruitment, admissions strategies, lowering college costs, providing equitable aid, college completion, and campus climate. Throughout the document, ED cites evidence and studies on the various activities recommended.

In a press release, Secretary of Education Miguel Cardona stated that the “report reflects President Biden and Vice President Harris’ unyielding commitment to equal opportunity and provides colleges and universities with a roadmap for advancing student body diversity.”

[The report on “Strategies for Increasing Diversity and Opportunity in Higher Education” is available here](https://sites.ed.gov/ous/files/2023/09/Diversity-and-Opportunity-in-Higher-Education.pdf?source=email). [ED’s guidance on diversity at IHEs issued earlier this year is available here](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-questionsandanswers-tvi-20230814.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

Author: KSC

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