

# The Federal Update for September 30, 2022

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Re: Federal Update

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## Legislation and Guidance

### Congress Passes Short-Term Spending Measure

The Senate passed a short-term funding measure known as a continuing resolution (CR) on Thursday that will keep the federal government open and funded at current fiscal year levels until December 16th. The House approved the legislation Friday afternoon. The CR comes as the beginning of fiscal year (FY) 2023 arrives at midnight tonight.

Lawmakers have not yet finalized funding levels for FY 2023, and members of the House are preparing to leave Washington for a month-long recess leading up to the November midterm elections, with the Senate departing for a two-week recess. The CR passed today will ensure that the government does not shut down when FY 2022 ends at midnight and will provide lawmakers additional time to finalize FY 2023 funding levels.

The CR includes other provisions and funding as well, including $12.5 billion in foreign aid for Ukraine and authorization for the Federal Emergency Management Agency (FEMA) to draw down certain disaster relief funds more quickly in light of recent storms impacting the United States. A bill from Senator Joe Manchin (D-WV) that would reform the energy permitting process was stripped from the legislation late Tuesday after some Democrats and Republicans announced their opposition to the provision, threatening to derail the passage of the CR.

President Biden will sign the legislation before the shutdown deadline tonight. When Congress reconvenes following the midterm elections, it remains unclear if lawmakers will pass a second CR to allow the 118th Congress the opportunity to make funding decisions for FY 2023 after the New Year.

Author: KSC

### ED Releases CARES Late Liquidation Guidance

In a letter posted on its website late Thursday afternoon, the U.S. Department of Education (ED) outlined the process for requesting the ability to extend the liquidation period for funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.  The obligation deadline for those funds is today, September 30th.  Under federal regulations, properly obligated funds must be liquidated within 120 days unless ED approves a specific extension request.

ED is following this same process with CARES Act funds.  Grantees are being asked to submit an extension request to ED’s Office of State and Grantee Relations “on their own behalf or on behalf of their subgrantees” (presumably meaning that States can submit requests for districts).  Requests must include a specific description of the facts and circumstances surrounding the expenditure and delay in liquidation.  Entities submitting requests on behalf of subgrantees must provide an assurance that they will continue to conduct oversight, attest to the allowability of expenditures, maintain documentation to support the timeliness of the obligation, and attest that subgrantees are low-risk entities.

Additional data regarding the State and local use of funds and the amounts obligated or liquidated by the deadline is requested through a template provided by ED on its webpage (the [template is linked here](https://oese.ed.gov/files/2022/09/CARES-ESSER-and-GEER-Liquidation-Extension-Request-Template-9.29.22.xlsx)).  ED encourages grantees to submit a liquidation extension request prior to December 31, 2022, in order to “minimize disruption,” but does not set a hard deadline for such requests.

The current guidance does not provide clarity around late liquidation for ESSER and GEER funds under the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) or the American Rescue Plan Act (ARP), only the CARES Act.

The [late liquidation letter is available here](https://oese.ed.gov/files/2022/09/CARES-ESSER-and-GEER-Liquidation-Extension-Request-Letter-9.29.22.pdf).

Author: JCM

## News

### Groups File Legal Challenges Against Student Debt Relief

This week three lawsuits were filed against the Biden administration’s student loan forgiveness plan, prompting changes to the policy that the White House hopes will preserve the forgiveness option. All of the lawsuits allege that the plan to provide borrowers of federal student loans up to $20,000 in debt relief is an illegal abuse of executive authority not authorized by Congress.

First, a conservative legal action group known as the Pacific Legal Foundation has filed suit in Indiana to block the plan. Their plaintiff is an attorney at the organization who has said he will receive automatic loan forgiveness, but that because his home state of Indiana will tax the loan forgiveness (most States have said they will not), he will be left worse off by the debt relief plan.

“Nothing about loan cancellation is lawful or appropriate,” the lawsuit says. “In an end-run around Congress, the administration threatens to enact a profound and transformational policy that will have untold economic impacts. The administration’s lawless action should be stopped immediately.”

The second lawsuit was brought by a group of six States (Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina) which argue that their State loan authorities – including the Arkansas Student Loan Authority – would be hurt because their revenue from servicing existing debt would drop, preventing it from offering additional private loans to students. And a final, separate, lawsuit was brought by another servicer, the Higher Education Loan Authority of the State of Missouri (known as MOHELA), arguing that its revenue would be negatively impacted by the decision.

The administration issued two lengthy memoranda from federal agencies justifying the loan forgiveness program. In both cases, government attorneys rely on a 2003 law which gives the U.S. Department of Education (ED) the power to modify the terms of federal student loans during national emergencies. The lawsuits all ask federal judges for a temporary injunction halting the processing of loan forgiveness. The Pacific Legal Foundation plaintiff asked the judge to rule on that request before October 1st. In a decision issued last night, the judge denied the request noting that ED now says it will add an opt-out provision to the application and allowing the plaintiff to amend and resubmit his complaint to address whether he now has any issues that can be resolved at the federal level.

The administration also said that it will now exclude privately held – but federally guaranteed – student loans issued under the Federal Family Education Loan (FFEL) program prior to 2010, and borrowers in the Federal Perkins Loan Program, which ended in 2017. An updated version of ED’s website now reads:

“Borrowers with FFEL Program loans and Perkins Loans not held by ED who have applied to consolidate into the Direct Loan program prior to Sept. 29, 2022, are eligible for one-time debt relief through the Direct Loan program… ED is assessing whether there are alternative pathways to provide relief to borrowers with federal student loans not held by ED, including FFEL Program loans and Perkins Loans, and is discussing this with private lenders.”

ED had said applications would open in early October, but the litigation and last-minute changes in scope may result in delays.

Resources:
Michael Stratford, “Biden’s student debt relief faces first major legal challenge,” *Politico*, September 27, 2022.
Author: JCM

## Reports

### ED OIG Issues Report on ESSER Spending by LEAs

The U.S. Department of Education (ED), Office of Inspector General (OIG) published a report on how 46 local educational agencies (LEAs) spent their ESSER funds to determine if LEAs prioritized giving funds to Title I schools or to children with disabilities. While the Coronavirus Aid, Relief, and Economic Security (CARES) Act does not require such prioritization, ED guidance encouraged such uses.

To determine the results, OIG requested expenditure information from LEAs based on the following categories: district-wide programs that benefitted all public schools, programs for a specific public school, or programs for equitable services at a non-public school. OIG then determined whether funds were used in Title I-eligible schools or allocated to serve children with disabilities. Of the 46 LEAs sampled, OIG removed 14 that were single-school LEAs to focus the report on how LEAs allocated funds between multiple schools.

In total, the 46 LEAs spent over $19.2 million, or about 95 percent, of the $20.2 million in ESSER I funds that they were awarded. The 32 multi-school LEAs spent a total of $17.9 million in ESSER I funds. Of the $17.9 million in ESSER I funds spent by multi-school LEAs, $12.9 million was spent on district-wide programs, $4.5 million was spent directly on public schools, and about $400,000 was spent directly for equitable services at non-public schools. OIG found that of the $4.5 million spent directly on public schools, $4 million was spent on Title I-eligible schools while $500,000 was spent on non-Title I schools.

Of the $19.2 million spent by the 46 LEAs, OIG found that $1.9 million or 10 percent was spent exclusively on children with disabilities.

In the report, OIG noted that it did not conduct any analysis on the allowability of such spending. OIG did not provide any recommendations to the Office of Elementary and Secondary Education.

[A copy of the full report can be found here.](https://www2.ed.gov/about/offices/list/oig/esser-funds-leas2022.pdf)

Author: ASB

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