The Bruman Group, PLLC logo, address, and contact information
1120 20th St, NW, Suite 740 Washington, D.C. 20036
Phone: 202.965.3652
Fax: 202.965.8913
bruman@bruman.com
www.bruman.com
Fax: 

**The Federal Update for September 6, 2024**

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

Re: Federal Update

Date: September 6, 2024

[Legislation and Guidance 1](#_Toc176518688)

[White House Outlines CR Funding Priorities as Spending Deadline Looms 1](#_Toc176518689)

[ED Issues Slate of New ESEA Guidance Documents 2](#_Toc176518690)

[News 3](#_Toc176518691)

[Judge Blocks New Student Loan Forgiveness Plan 3](#_Toc176518692)

## Legislation and Guidance

### White House Outlines CR Funding Priorities as Spending Deadline Looms

Congress returns to session next week after a weeks-long summer recess, with fiscal year (FY) 2025 funding at the top of the agenda. The current fiscal year ends on September 30th, and with no funding bills finalized earlier this summer, Congress plans to pass a short-term continuing resolution (CR) upon lawmakers’ return to Washington this month.

While a CR generally extends funding levels at the prior fiscal year’s levels for days, weeks, or months, at times lawmakers include additional funding or policy provisions for specific priorities. The White House submitted a list of such priorities, or “funding anomalies,” to Congress this week, which President Biden is requesting to be included in the CR planned for later this month. Included in the request is $2.4 billion for Federal Student Aid to “avoid disruption of core operations to process, award, disburse, and manage Federal student aid,” as well as several other non-education funding increases.

While lawmakers hope to pass a CR before FY 2024 ends on September 30th, there is currently disagreement amongst House conservatives and Democrats on how long the CR should extend. House conservatives are pushing for an extension until March 2025, while Democrats prefer to finalize appropriations before the end of the calendar year, which is likely to make CR negotiations challenging over the next few weeks. Lawmakers have limited time left in session this year, with an extended recess during the month of October to allow lawmakers time to campaign ahead of the election on November 5th.

Resources:

Caitlin Emma and Joe Gould, “White House details stopgap funding priorities to Congress,” *Politico*, September 3, 2024.

Author: KSC

### ED Issues Slate of New ESEA Guidance Documents

On Wednesday, the U.S. Department of Education (ED) issued three new documents on the implementation of the Elementary and Secondary Education Act (ESEA). The documents are intended to assist States in “implementing key aspects” of the law, according to a letter to chief State school officials.

The first of the documents is draft guidance regarding school improvement under Title I, as well as Section 1003 school improvement grants and Section 1003A Direct Student Services. The document focuses on the classification of schools as in need of “comprehensive support and improvement” (CSI), “targeted support and improvement” (TSI) and “additional targeted support and improvement” (ATSI), the creation and approval process of plans for schools within those categorizations, as well as how schools exit those classifications. There is specific guidance on how States should define and implement “more rigorous state-determined action” when a school fails to exit one of the classifications within a certain number of years. Additionally, the document provides specific examples of “evidence-based” interventions that can be implemented to target learning acceleration and chronic absenteeism and addresses potential conflicts with civil rights law. Finally, significant portions of the guidance focus on identifying and addressing resource inequities as well as the obligation to conduct regular resource allocation reviews. ED has announced that it will be monitoring for resource allocation reviews, and this guidance is likely to be the basis of those discussions. Comments on this guidance are open through October 4th. The [draft guidance is available here](https://oese.ed.gov/files/2024/09/School-Improvement-Guidance-public-comment.pdf).

Second, ED has released new final guidance on the 21st Century Community Learning Centers (21st CCLC), also known as Title IV-B of ESEA. The draft guidance was published in May of 2023, and ED notes in a separate document that they have added references to “summer learning” in reference to out-of-school-time programs, as well as new questions and answers that address alignment with the Workforce Innovation and Opportunity Act (WOIA), “braiding” funds with other federal programs, and expectations regarding program income. Most significantly, the guidance changes how program fees may be charged. In its letter, ED strongly discourages program fees, arguing that:

“because 21st CCLC programs must primarily target students from low-income backgrounds, unless program fees are required by another coordinated Federal program, the Department will apply a rebuttable presumption that fees are not necessary to achieve the goals and objectives of the program. In addition, because the program is designed to serve students from low-income backgrounds and does not prioritize maximizing the number of students served, the Department generally does not consider the ability to provide more programs, or larger programs, to be, on its own, a sufficient justification for charging program fees.”

If a program operator wishes to charge fees, it must now submit a written request for prior approval to ED through the State agency. The [21st CCLC guidance is available here](https://oese.ed.gov/files/2024/09/OESE-21st-CCLC-Non-Regulatory-Guidance-2024-v.2.pdf); the [letter regarding changes from the draft version is here](https://oese.ed.gov/files/2024/09/21st-CCLC-Summary-Response-to-Public-Comments-2024.pdf).

Finally, ED has published a [Dear Colleague letter](https://oese.ed.gov/files/2024/09/Public-Reporting-DCL-9.4.24-Web-1.pdf) outlining recommendations to States for improving public reporting required under the ESEA. The recommendations stem from the ED’s targeted monitoring in the prior year regarding requirements for States to: 1) prepare and widely share report cards that provide information on State, local educational agency, and school performance and progress in an understandable, uniform format; and 2) publicly report the State’s progress in ensuring that low-income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers. The letter offers recommendations for States based on the outcomes of these monitoring visits.

Author: JCM

## News

### Judge Blocks New Student Loan Forgiveness Plan

On Tuesday, seven Republican-led States sued to prevent the U.S. Department of Education (ED) from implementing a proposed rule that would provide debt relief to federal student loan borrowers. Two days later, a federal judge in Georgia issued a temporary restraining order halting implementation of the program.

The suit is the latest challenge to the administration’s attempt to implement student loan forgiveness and loan repayment adjustments. Last year, the Supreme Court struck down the initial plan to forgive up to $20,000 for borrowers. Another repayment plan program is currently stalled in court challenges.

However, this suit comes before ED has even finalized the proposed rule – an unusual attempt to block a federal rule. But the States – Alabama, Arkansas, Florida, Georgia, Missouri, and North Dakota – argue that they have evidence that ED has been “quietly” asking loan servicers to prepare to eliminate the debt of borrowers as early as this week. They requested an emergency temporary restraining order to “avoid unlawful forgiveness of $73 billion overnight, with hundreds more billions in losses to follow.” The complaint also calls ED’s actions “brazenly lawless” and the “most aggressive” attempt yet to forgive student loans.

ED has declined to comment on the suit but has continued to express its intent prioritize relief for borrowers. However, the Executive Director of the Student Borrower Protection Center said that the evidence the States claim to have only show that ED “seemingly told some servicers to take steps to prepare for a potential future rule” and does not prove any nefarious action.

In the order issued Thursday, the judge wrote that the plaintiff States “show a substantial likelihood of success on the merits given the Rule's lack of statutory authority” and that they “show they will suffer irreparable injury” from the rule’s implementation. The order is effective for 14 days but could be extended, and a hearing in the case is scheduled for September 18th.

The proposed program would provide relief to student loan borrowers who owe more than they borrowed, have been paying for 20-25 years, have attended training programs that resulted in low earnings and high debt loads, and have never applied to forgiveness programs for which they are eligible.

The program is also distinguishable from previously challenged programs as it relies on authority in the Higher Education Act, as opposed to other laws used as authority to act in the other programs.

The Department was planning to finalize and publish the final rule in October of this year.

Resources:

Katherine Knott, “Federal Judge Halts Biden’s Debt Relief Plan Before It’s Finalized,” *Inside Higher Ed,* September 6, 2024.

Rebecca Carballo, “Republican states sue to block Biden's student loan forgiveness plan,” *Politico*, September 4, 2024.

Author: BTW

***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 2024

Contributors: Julia Martin, Kelly Christiansen, Brandi Tennant Wills

Posted by the California Department of Education, September 2024