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# **The Federal Update for November 15, 2024**

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

Re: Federal Update

Date: November 15, 2024

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## Legislation and Guidance

### Republicans Maintain Control of House, 119th Congress Begins to Take Shape

Following final election results from additional races this week, Republicans will maintain majority control of the House in the 119th Congress. However, it is still unclear what the final balance in the House will be, as a few races are still pending, but Republicans are expected to have a slim majority. That slim majority could temporarily be narrowed further, as President-elect Trump has already appointed some Members of Congress to cabinet positions and those vacant House seats must be filled through gubernatorial appointments or a special election process.

Congressional leadership began to take shape this week as well, with the Republican conference electing Senator John Thune (R-SD) as the next Senate Majority Leader. Thune currently serves as Minority Whip and while he has been a vocal opponent of President-elect Trump in the past, he vowed to support and advance Trump’s agenda as leader. In addition, Republicans gave their support to Representative Mike Johnson (R-LA) to continue in his current role as Speaker of the House, but Johnson will still face an official vote by the full House in January after the 119th Congress is sworn in. Democrats will hold their own leadership elections in the coming weeks, but Representative Hakeem Jeffries (D-NY) is expected to be reelected as House Minority Leader and Senator Chuck Schumer (D-NY) will move from the Senate Majority Leader position to Minority Leader.

At the committee level, current Ranking Member of the Senate Committee on Health, Education, Labor, and Pensions Bill Cassidy (R-LA) will take over as Chair of the Committee. Cassidy has said he hopes to prioritize education more in the next Congress, as the Committee has taken little action on education issues in the past two years. And on the House side, committee chairs have not been selected yet, but three members have expressed interest in running for Chair of the Committee on Education and the Workforce, including Representatives Burgess Owens (R-UT), Tim Walberg (R-MI), and Joe Wilson (R-SC).

President-elect Trump has begun naming nominees for his administration as well but has not yet announced who he will put forward for Secretary of Education.

Author: KSC

### **House Passes FAFSA Deadline Legislation**

The House passed legislation Friday morning that would require the U.S. Department of Education (ED) to open the Free Application for Federal Student Aid (FAFSA) by October 1st each year.  The legislation passed with significant bipartisan support, with only one member voting no.

Although ED has often released the FAFSA on October 1st in prior years, the legal deadline is much later. This year and last, students and families have seen later rollouts as the FAFSA went through a significant revamp and related technical challenges starting in 2023.  Some House Democrats opposed the legislation earlier this year, when it would have forced ED to comply by October 1st this year, but those members gave their support this week, as the new requirement will now take effect in 2025 and provide ED time to prepare.  The legislation will now be referred to the Senate, where Ranking Member of the Senate Committee on Health, Education, Labor, and Pensions, Bill Cassidy (R-LA), has introduced identical legislation.  It is unclear if or when the Senate will take up the legislation.

Resources:  
Rebecca Carballo, “House passes FAFSA deadline bill,” *Politico*, November 15, 2024. Author: KSC

### ED to Issue Bundled Services Guidance

Despite objections from lawmakers and institutions, the U.S. Department of Education (ED) is reportedly preparing to release higher education guidance that would make updates to the bundled services exception.

The Higher Education Act prohibits institutions from providing incentive compensation to online program managers – third-party servicers that often provide recruitment and management services to institutions with online education programs (OPMs). However, a 2011 Dear Colleague letter provided an exception to the law, allowing OPMs to receive incentive compensation if they offer a bundle of services – called the bundled services exception. The new guidance would supersede the 2011 exception.

ED’s policy change would come after a declining interest in OPMs and after 2U, a prominent OPM, filed for bankruptcy this year. ED also recently withdrew guidance issued earlier this year that would have expanded the definition of third-party servicers and required institutions to submit their third-party servicer contracts to ED. Proponents of OPMs were relieved the guidance was withdrawn.

In response to reports that changes to the 2011 guidance were coming, Chair of the House Committee on Education and the Workforce, Virginia Foxx (R-NC), sent a letter to ED Secretary Miguel Cardona last week. The letter criticized the administration for “last ditch efforts” to change policy weeks before a new administration. Foxx also argued that revising the 2011 guidance would hinder longstanding partnerships between institutions and OPMs and “unleash chaos.”

An ED spokesperson said that they have received the letter, but did not confirm whether ED would release new guidance before the new administration takes office.

[Foxx’s letter can be found here.](https://edworkforce.house.gov/uploadedfiles/letter_to_ed_11.7.25_final.pdf)

Resources:

Liam Knox, “Education Dept. Moves Forward With Bundled Services Guidance,” *Inside Higher Ed*, November 11, 2024.

Natalie Schwartz, “Foxx urges Cardona to preserve guidance over tuition-share deals with OPMs,” *Higher Ed Drive*, November 11, 2024.

Author: BTW

### Administration Re-Publishes Rule on Income-Based Repayment

The Biden Administration published a rule Thursday which would revert to an older version of Income-Based Repayment (IBR) Programs and extend the effective date of those programs. This rule comes after the proposed student loan forgiveness programs have been halted by federal courts, and the incoming administration is likely to withdraw many of the remaining proposals.

Approximately 8 million borrowers have been moved to the SAVE repayment plan, which is currently stalled in federal court. This interim final rule bypasses the comment period so it can be implemented immediately. It says that plans for moving borrowers back to IBR will be released within the next 30 days. IBR will allow forgiveness of any remaining federal student loan debt after 25 years of repayment, and the new rule would apply to recent graduates as well as more established borrowers.

Publishing regulations now is risky, as it is within the window that would allow Congress to rescind them under the Congressional Review Act. But if lawmakers rescind those rules, the agency would be prohibited from ever issuing similar regulations on the same legislative text – potentially leaving loan servicers without clear, reliable direction on how to manage or process forgiveness. The regulatory notice also argues that “the scope of this rule is narrow,” revising the end date for borrowers to enroll. Additionally, the document notes that “Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply,” and suggesting that this rule must be published now.

[The Federal Register notice is here](https://public-inspection.federalregister.gov/2024-26698.pdf).

Author: JCM

### ED, HHS Release New Foster Care Guidance

Today the U.S. Departments of Education and Health and Human Services released new non-regulatory guidance on serving students in foster care. According to a statement from the agencies, the guidance “reflects our best current thinking on the program requirements for the educational stability provisions” in Title I of the Elementary and Secondary Education Act (ESEA) and focuses primarily on those provisions.

The guidance reiterates the broad definition of “foster care” placements adopted in the regulations, noting that it includes foster family homes, formal kinship care, group homes, emergency shelters, residential facilities, childcare institutions, and “preadoptive homes,” as well as those children who are placed in trial reunification with their families while a child welfare agency retains responsibility. It attempts to clarify the roles and responsibilities of the State and local points of contact (POCs).

The need for collaboration between State educational agencies and State child welfare agencies is also emphasized in the guidance, and collaborating agencies are encouraged to hold biweekly or other regular meetings, regularly share data and information, facilitate cross-systems training and technical assistance, and review and revise shared statewide guidance. Collaboration should include student transportation, school meals, personnel, data collection, supplemental educational services, and other programs.

The primary focus of the guidance is the “school of origin” language in Section 1111 of ESEA, and how it is impacted when children have never been enrolled in school, are in schools with feeder patterns, or are exiting foster care. It also notes that students in foster care “must remain in their school of origin for the duration of their time in foster care unless a determination is made that it is not in their best interest to remain in the school of origin.” There is a separate section on how to make a “best interest determination” when it comes to the educational stability of individual students, as well as how to coordinate and manage transportation, including transportation across State lines, and other language regarding the interaction of foster care provisions with Individualized Education Programs and English Learner requirements.

This guidance is an update of a document published in 2016 and is intended to follow a 2023 memorandum and “dear colleague” letter to “remind chief State school officers and State child welfare agencies of their obligations.”

[The guidance is here](https://www.ed.gov/media/document/non-regulatory-guidance-ensuring-educational-stability-and-success-students-foster-care-november-15-2024).

Author: JCM

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