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 August 30, 2024**

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

Re: Federal Update

Date: August 30, 2024

[Legislation and Guidance 1](#_Toc175838430)

[ED Issues Final EDGAR Regulations 1](#_Toc175838431)

[OESE Publishes New Draft Title I, Part D Guidance 2](#_Toc175838432)

[News 3](#_Toc175838433)

[SCOTUS Says it Will Not Restore SAVE Loan Forgiveness 3](#_Toc175838434)

## Legislation and Guidance

### ED Issues Final EDGAR Regulations

On August 29th, the U.S. Department of Education (ED) published in the *Federal Register* the long-awaited final revisions to the Education Department General Administrative Regulations (EDGAR). The proposed changes were promulgated in January. These EDGAR regulations will be effective as of September 30, 2024. The [publication can be found here](https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-17239.pdf).

EDGAR contains the foundational rules for education grants management and includes administrative and cost guidance applicable to both direct discretionary grants (Part 75) and State-Administered grants (Part 76). These regulations were first issued 50 years ago and have been amended several times since, most recently in 2013. The 2024 revisions: 1) make technical updates to align EDGAR with up-to-date statutory changes, 2) align EDGAR with the ESEA, 3) expand the selection criteria the Secretary of Education may use for discretionary grants, 4) clarify procedural approaches for the submission of applications, 5) improve public access to research and evaluation, and 6) expand the flexibility for ED in administering its grant programs.

The most significant change, in our view, impacts the authority of State agencies (grantees) and local entities (subgrantees) under ESEA, IDEA, Perkins, AEFLA and the Rehabilitation Act of 1973, to further subgrant funds. For the past 50 years, 34 CFR 76.50(b) and (c) permitted subgranting only where it was explicitly permitted by the authorizing statute. Under the new regulations, States are permitted to use State-administered formula funds directly or to make subgrants to eligible applicants even where the applicable statutes and regulations do not address eligible subgrantees (34 CFR 76.50(b)). For example, to the extent that these State-administered programs permit the State to reserve funds to conduct State leadership activities (e.g., Perkins has a 10 percent set-aside for State leadership), States may now prefer to subgrant part of that set-aside in lieu of resorting to the more onerous procurement process.

Significantly, 34 CFR 76.50(b)(3) also permits a State to authorize its subgrantees to make further subgrants. This new authority will allow those subgrantees—such as consortia, regional, or intermediate units (to the extent that the authorizing statute allows for such subgrantees)—to further subgrant formula dollars. There are two very important caveats. To the extent that a State authorizes a subgrantee to further subgrant funds, the subgrantee becomes a pass-through entity and is therefore subject to all of the requirements of a pass-through in 2 CFR 200.332 of the Uniform Grant Guidance, including relevant monitoring responsibilities (34 CFR 76.50(c)). Second, under no circumstances may a State which avails itself of this new authority change the amount of federal funds for which the entity is eligible through a statutory or regulatory formula (34 CFR 76.50(e)). For example, if the statute requires the State to pass through 95 percent of the funds under a formula, the State has no discretion to deviate from that requirement.

We invite you to reach out to The Bruman Group, PLLC if you have questions relating to this significant change in federal education grants management.

Author: MLB

### OESE Publishes New Draft Title I, Part D Guidance

The U.S. Department of Education’s (ED) Office of Elementary and Secondary Education (OESE) issued new draft guidance this week that covers requirements and frequently asked questions for the Title I, Part D Neglected and Delinquent Program under the Elementary and Secondary Education Act. ED guidance for the Title I-D program was last updated in 2006, and the draft guidance released this week supersedes the prior guidance.

The new draft guidance includes much of the information from the prior version, with some updates and changes made based on the 2015 reauthorization of ESEA. The guidance covers both the State agency programs under subpart 1 and the local agency programs under subpart 2 of Title I-D. Topics covered in the guidance include, among others, application requirements, allocations, uses of funds, fiscal requirements, eligibility, and program evaluations.

ED is accepting comments from stakeholders on the guidance until September 26, 2024, and notes three particular areas on which stakeholders should consider providing feedback: (1) identifying Title I, Part D requirements or topics that grantees think ED has not addressed but should; (2) identifying questions or answers in the document, by question number, that grantees think are not clear and provide a suggestion for enhancing clarity; and (3) providing suggestions for enhancing the document overall. ED directs stakeholders to submit any comments to [oese.feedback@ed.gov](mailto:oese.feedback@ed.gov).

While the guidance is in draft form, ED is encouraging grantees and subgrantees to rely on the guidance in its current form as they administer and implement their programs for the current year.

[The draft guidance is available here](https://oese.ed.gov/files/2024/08/Title-I-Part-D-Guidance-draft-for-public-comment-8-2024.pdf).

Author: KSC

## News

### SCOTUS Says it Will Not Restore SAVE Loan Forgiveness

The U.S. Supreme Court has rejected an argument from the U.S. Department of Education (ED) that it should restore a student loan forgiveness program while litigation proceeds.

Federal judges in Kansas and Missouri invalidated key parts of the SAVE student loan program earlier this summer, and then on appeal, the 8th Circuit blocked the entire program in July, calling it “overbroad.” The State plaintiffs also argued that the SAVE program would cause financial harm to student loan servicer MOHELA because it would lose business, though the administration argued that many of the borrowers who would qualify for forgiveness did not have loans serviced by MOHELA. The U.S. Department of Justice also noted that under the Higher Education Act, the administration has the authority to create income-contingent repayment programs.

However, the plaintiff States have argued that ED would need explicit permission from Congress to implement this kind of student loan forgiveness program because of its scope – the cost of the program is estimated at $400 billion over the next ten years.

The Supreme Court may have another chance to rule on this issue after litigation concludes in the lower courts.

Author: JCM

***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: Michael Brustein, Julia Martin, Kelly Christiansen

Posted by the California Department of Education, August 2024