



# FEDERAL UPDATE

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# AGENDA

- Appropriations and other Congressional action
- New Guidance
- What's coming from the administration
- Court cases of note

# CONGRESSIONAL ACTION

# PRESIDENT'S BUDGET PROPOSAL

Program	FY 2023 President's Proposal	FY 2023 Final	FY 2024 President's proposal	Percent change v. FY 2022
<b>Title I-A</b>	\$37,281	\$19,088	\$20,536	11.69%
<b>Title I-C</b>	\$376	\$376	\$376	--
<b>Title II</b>	\$2,149	\$2,190	\$2,190	--
<b>Title III</b>	\$1,075	\$890	\$1,195	34.3%
<b>21<sup>st</sup> Century</b>	\$1,310	\$1,330	\$1,330	--
<b>Title IV-A/SSAE</b>	\$1,220	\$1,380	\$1,405	1.81%
<b>IDEA Part B</b>	\$16,259	\$14,194	\$16,259	14.55%
<b>CTE State Grants</b>	\$1,355	\$1,430	\$1,473	3.04%
<b>AEFLA</b>	\$739	\$729	\$759	4.11%
<b>CCDBG</b>	\$7,562	\$8,021	\$9,000	12.2%

# DEBT CEILING DEAL

- Debt ceiling legislation passed in June 2023:
  - Caps FY 2024 spending at FY 2023 levels
  - Allows 1% increase for 2025
- If Congress does not pass all 12 appropriations bills by January 1, 2024, all funding receives a 1% cut
- Raises debt ceiling until January 2025

# HOUSE SPENDING PROPOSAL

Program	FY 2023 Pres. Proposal	FY 2023 Final	FY 2024 Pres. proposal	House Bill	House bill vs. 2023 Final
<b>Title I-A</b>	\$37,281	\$19,088	\$20,536	<b>\$3,682*</b>	<b>-80%</b>
<b>Title I-C</b>	\$376	\$376	\$376	<b>\$376</b>	--
<b>Title II</b>	\$2,149	\$2,190	\$2,190	<b>\$0</b>	<b>-100%</b>
<b>Title III</b>	\$1,075	\$890	\$1,195	<b>\$0</b>	<b>-100%</b>
<b>21<sup>st</sup> Century</b>	\$1,310	\$1,330	\$1,330	<b>\$1,330</b>	--
<b>Title IV-A/SSAE</b>	\$1,220	\$1,380	\$1,405	<b>\$1,380</b>	--
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<b>CTE State Grants</b>	\$1,355	\$1,430	\$1,473	<b>\$1,430</b>	--
<b>AEFLA</b>	\$739	\$729	\$759	<b>\$729</b>	--
<b>CCDBG</b>	\$7,562	\$8,021	\$9,000	<b>\$8,021</b>	--

# HOUSE SPENDING PROPOSAL

- “Approximately \$31 billion provided during the pandemic remains unspent and further investments will not be provided until these funds are used responsibly”
- Recissions to ESEA funding from prior year!
- Policy riders
  - Prohibit use of funds for carrying out Title IX rule
  - Prohibit use of funds for implementing new “borrower defense” rule
  - Limits ability to waive federal student loans
  - Changes surrounding withholding of administrative funds for MSFS violations
  - Instruction to ED to “obtain annually updated local educational agency-level census poverty data”

# OUTLOOK FOR APPROPRIATIONS



- Substantive increases to spending extremely unlikely
- House Appropriations committee pushing for 302(b) caps that cut further below debt ceiling agreements
- Plan for flat-funded amounts (in dollars) **OR LESS**
  - Inflation may impact value of appropriations
- Delay, delay, delay



# COMING UP IN CONGRESS

- **Farm Bill**
  - Lawmakers have said they are committed to doing it by 2023 deadline
  - But extension more likely than not
- **Short-term Pell grants**
  - Bipartisan, still working out details
  - Part of legislative package?
- **Action on student loan repayment plans?**

# COMING UP IN CONGRESS

- CRA Resolutions
  - The Congressional Review Act (CRA)
    - Sets requirements for agencies to share information with Congress
    - Among other things, allows Congress to pass a resolution of disapproval to strike federal rules
    - Must be passed within *60 legislative* days of rule's publication
    - Requires signature by President to take effect
    - Prohibits agency from ever issuing “substantially similar” regulations on same legislative text

# COMING UP IN CONGRESS

- CRA Resolutions
  - What is “substantially similar?”
    - We don’t know yet!
      - Rules have either been withdrawn before CRA (e.g. 2016 Title I SNS rule), or agency has not tried to reregulate (e.g. DOL ergonomics rule)

## Sour fight ends with FDA ruling soy and nut milks can still be called “milk”

FDA found that Americans are generally not confused about what's actually milk.

BETH MOLE - 2/23/2023, 9:07 AM



# COMING UP IN CONGRESS

- CRA Resolutions
  - Two wide-scale impacts
    - Creeping expansion of CRA to apply to “regulatory actions” in addition to written rules
      - Assertion of further Congressional power
    - Rush to get final rules out before they would be subject to overturning under CRA
      - 60 legislative days → July 2024ish



# THE ADMINISTRATION

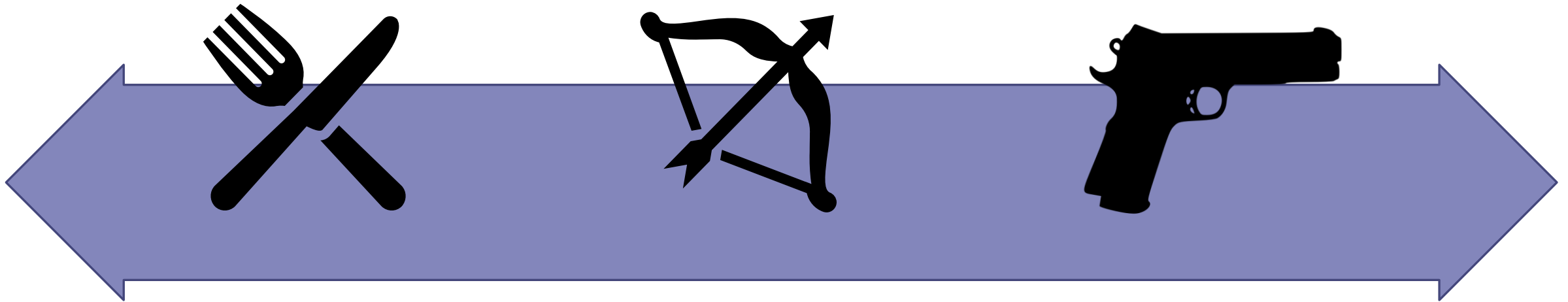
# NEW GUIDANCE: WEAPONS PURCHASES AND TRAINING

- Bipartisan Safer Communities Act (BSCA) Stronger Connections Grant
  - <https://oese.ed.gov/files/2023/04/23-0083.BSCA-FAQs.pdf> NEW!  
April 2023
  - Examples of allowable uses of funds for Title IVA
  - Special funds subject to regular Title IV requirements
    - E.g. Maintenance of Effort, supplement, not supplant, equitable services

# NEW GUIDANCE: WEAPONS PURCHASES AND TRAINING

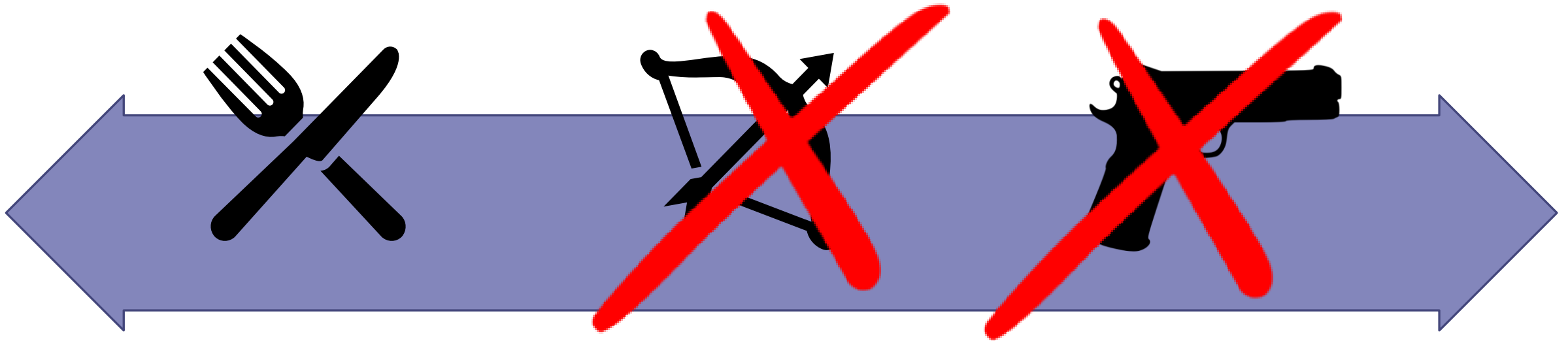
- Bipartisan Safer Communities Act (BSCA) Stronger Connections Grant, cont.
  - First guidance on new amendment to Sec. 8526 prohibiting any ESEA funds from being used for weapons purchases or training
    - “Dangerous weapon” as defined in Title 18 of the United States Code is a “weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than 2 1/2 inches in length.”
  - Applies to all ESEA funds after June 2022!

# NEW GUIDANCE: WEAPONS PURCHASES AND TRAINING





# NEW GUIDANCE: WEAPONS PURCHASES AND TRAINING



ED to a State: “under the plain language of the new prohibition on dangerous weapons, archery programs, hunting safety programs, and any other programs—such as wilderness safety courses—that provide, or provide training in the use of, items that are **technically dangerous weapons may not be funded**”

# CONGRESSIONAL RESPONSE

Cornyn/Tillis [letter](#) (7/10): “misinterpreted”... “exceeds its scope under the law”... “only meant to withhold funding from training school resource officers with ‘dangerous weapons,’ not enrichment programs for students.”

House Education and Workforce [Committee letter](#) (8/3): “egregious, irresponsible overreach” ... “flies in the face of Congressional intent” ... “gross misinterpretation” ... “to advance a radical, Far-Left, anti-gun agenda.”

# NEWLY FINALIZED TITLE I EQUITABLE SERVICES GUIDANCE

- Published May 2023: <https://oese.ed.gov/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf>
- Adds more explanation surrounding calculation of proportionate share
- Maintains ED position on “representative sample” for survey data through extended consultation
  - Presume representative sample
  - Should allow challenges during consultation – then LEA must engage in further review and share conclusions with private schools
  - If not representative, then “supplement” with other data sources
  - What is “representative?”
    - ED doesn’t say (examples: 300/400 yes, 25/100 no)

# NEWLY FINALIZED TITLE I EQUITABLE SERVICES GUIDANCE

- Analysis:
  - Updated version removes language saying: “[r]igorous statistical analyses may not be necessary to justify the representativeness of the sample.”
  - Standard: “consider the degree to which respondents are similar to non-respondents such as by using neighborhood or Title I public school attendance area characteristics”

## NEWLY FINALIZED TITLE VIII EQUITABLE SERVICES GUIDANCE

- <https://oese.ed.gov/files/2022/03/Draft-Title-VIII-Equitable-Services-Guidance.pdf>
- Programs that are:
  - (1) subject to equitable services AND
  - (2) not Title I,A

# NEWLY FINALIZED TITLE VIII EQUITABLE SERVICES GUIDANCE

- Major changes:
  - Lots of new information on 21<sup>st</sup> Century program, Project SERV
    - including how to calculate proportionate share
    - Will be aligned with BSCA fund guidance
  - District is not required to (but may) use the same entrance and exit procedures for English learners in private schools as it does in public schools, unless required by State law
  - Maintains guidance that conferences and travel are participant support costs
    - Need prior written approval above \$5k per person per event

# NEWLY FINALIZED TITLE I EQUITABLE SERVICES GUIDANCE

- Data sources
  - Must consult on choice (e.g. survey, proportionality, etc., with non-public schools
    - Goal of reaching agreement, timely, meaningful
    - “before the LEA makes any decision that affects the opportunities of eligible private school children”
    - Should discuss all allowable data sources in Title I
  - Suggest that private school write a “cover note” for surveys or include in registration packet to help with data collection

# NEW PROPOSED RULE: TITLE IX

- For purposes of all athletics programs run by recipients of federal financial aid
  - If a recipient “adopts or applies” a “sex-related criteria” for participation on any sports team consistent with a student’s gender identity, criteria must:
    - Be “substantially related to achievement of an important educational objective”
      - relevant to grade level, sport, level of competition
- AND
- “minimize harms to students” who would be limited or denied participation



# THE FUTURE OF THE ATHLETICS RULE

- More than 142,000 public comments
- Primary objections:
  - Doesn't go far enough (from LGBTQ advocates)
  - “No meaningful guidelines” - Lack of clarity/clearly defined rules that leave compliance up to individual determinations (school officials AND conservative lawmakers)
  - Sets open sports as default with burden of proving unfairness on objectors (conservative groups)
  - Conflict with State laws

# THE FUTURE OF THE ATHLETICS RULE

- Final rule timeline expected October 2023 per ED
  - Alongside educational programs rule
  - If so, likely effective starting in SY 2024-25
- Likely to be subject of litigation
  - More likely at State/local level
  - Potential to quickly jump to federal level if judge accepts standing
- Collision course with Congress?



# PROTECTION OF WOMEN AND GIRLS IN SPORTS ACT



- H.R. 734
- Amends Title IX of the Education Amendments of 1972
- Applies to all “recipients” of federal financial assistance
- Prohibits students from participating in women’s or girls’ sports if their reproductive biology and genetics are “designated male at birth”
- Passed House, Senate won’t take it up and President threatened veto

# COURT CASES: THREE TO KNOW

# (1) TITLE IX LITIGATION



- Two potential vehicles:
  - Notice of Interpretation (NOI) lawsuit filed by States, currently in federal court
  - Forthcoming Title IX Final Rule

## (2) CHARTER SCHOOLS CASE

- North Carolina charter school requires different uniforms for male and female students because of belief that girls are “fragile vessels” and need to be shown courtesy/chivalry
- Argues the Equal protection clause does not apply because it is a private entity, not a “state actor”
  - Expand on Maine voucher case argument that private recipients of federal aid are not State actors
- Supreme Court DENIED CERT → will not take up the case, 4<sup>th</sup> Circuit decision stands

## (2) CHARTER SCHOOLS CASE 2.0?

- Oklahoma approved opening of a virtual Catholic charter school, St. Isidore of Seville
- Group of parents sued State of Oklahoma saying it:
  - Violated charter laws by approving a school that wouldn't attest to nondiscrimination,
  - Violated a state constitutional provision that public schools be operated "free from sectarian control," and
  - Violated a state statute requiring that charter schools be "nonsectarian."

## (2) CHARTER SCHOOLS CASE 2.0?



- Oklahoma case asks which 1<sup>st</sup> Amendment right is more important:
  - Parents' right to freely express religion
  - Constitutional prohibition on public entities endorsing religion (establishment clause)
  - Following on Maine case (2022)
- Implications for federal funding/recognition of charter schools
- Won't be in Supreme Court this year, but maybe fall 2024!



### (3) STUDENT LOAN FORGIVENESS

- Two main questions of law:
  - Did student loan forgiveness have to go through APA notice and comment process?
  - Does 2003 HEROES Act give President authority to wipe student loan debt?
- The decision:
  - Whether or not procedurally appropriate, action is overly broad
  - HEROES Act ability to “waive or modify” does not provide this authority
  - These are big decisions where administration needs “clear Congressional authorization”



# STUDENT LOANS AND THE “MAJOR QUESTIONS” DOCTRINE

- The concept that Congress must speak particularly clearly when it authorizes the executive branch to take on “matters of political or economic significance.”
  - How much action can President take without Congress being explicit?
  - What is “significant?” How is that measured?
- Majority opinion: “given the ‘history and the breadth of the authority’ asserted by the Executive and the ‘economic and political significance’ of that assertion, the Court has ‘reason to hesitate before concluding that Congress’ meant to confer such authority.’”

# POWER STRUGGLE BETWEEN BRANCHES OF GOV'T



QUESTIONS?

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