



EDUCATION UNDER THE BIDEN
ADMINISTRATION:
First Steps and What to Expect

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Virtual Spring Forum 2021

The Future of the Federal Role in Education:
Bringing Clarity to Chaos

Agenda

- Congress
 - Stimulus bills
 - Procedural maneuvers
 - Looking forward
- The Administration
 - Title IX rewrite
 - College affordability
 - Assessment waivers and other flexibility

Stimulus Legislation

- Families First Coronavirus Response Act (FFCRA) (March 14, 2020)
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020)
- Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) (December 27, 2020)
- American Rescue Plan Act (ARP) (March 11, 2021)

CARES Act

- \$30.75 billion for K-12 and higher education stimulus
- Created GEER, ESSER, HEERF programs
- Specific waivers for K-12 education
- MOE requirement for 2020 and 2021

CRRSA

- \$81.8 billion for K-12 and higher education
- Refills ESSER, GEER, HEERF
 - Expanded list of allowable activities for K-12, including addressing learning loss, school ventilation, and facility improvements
- Creates EANS program (spillover to GEER)
- Proportional MOE requirement for 2022

ARP

- \$180 billion for K-12 and higher education
- Additional funding for ESSER, HEERF
- Additional funding for EANS
- Proportional MOE requirement for 2022, 2023
- Created MEQ requirement at State, local level

Will there be another stimulus?

- Likely no
 - Focus gradually shifting to "recovery" amid large-scale vaccine rollout and availability
 - Surveys suggest most district leaders say they have enough money
 - Continue to provide funding through regular-year appropriations
 - Questions about whether money can be spent down timely and allocably

Biggest Obstacles for States and LEAs

- Spending funds within time allotted
 - Being able to demonstrate that funds are being spent and tracked appropriately
- Supply chain
 - Are there enough teachers? Portable classrooms?
 - Construction supplies and labor, if applicable
- Fluidity of return plans
 - And requirement that expenditures be tied to the pandemic

New in the Congressional Toolbox

- Budget Reconciliation
 - Special legislative procedure introduced in the 1970's
 - Limited to budget measures → the Byrd rule
 - No impact on Social Security
 - Must impact budget within 10-year Congressional window
 - Impact must be more than merely incidental



New in the Congressional Toolbox

- Budget Reconciliation
 - NOT subject to the filibuster in Senate (50-vote threshold)
 - May expand use?
 - Parliamentarian allowed us more than once in a fiscal year
 - What to use it for?
 - Minimum wage, corporate tax rates, infrastructure



New in the Congressional Toolbox

- Budget Reconciliation
 - Impact on "comity"
 - Democrats have a 50-50 split in the Senate, with control determined by Vice President
 - Reliance on reconciliation and 50-vote threshold means fewer opportunities/reasons to build bipartisan legislation
 - Lack of outreach could result in backlash if/when Republicans take control of either chamber

Infrastructure Package

- May be next "big" piece of legislation
 - Focus on economic recovery and job creation
- White House proposal
 - \$100 billion for K-12 and higher education
 - Combination of direct grants and bonds
 - Purposes: air quality, energy efficiency, improvement of school kitchen facilities, increased access to community college for rural areas, improved technology for higher ed
 - \$100 billion for broadband internet
 - \$45 billion for safe drinking water program through EPA

Other Agenda Items: Out vs. In

Old	New
"Rescue"	"Recovery"
Reactive legislating	Proactive legislating
COVID response	Policy legislation – including reauthorizations and longstanding policy goals
"Regular order"	Any legislative procedure that works to get legislation to the finish line

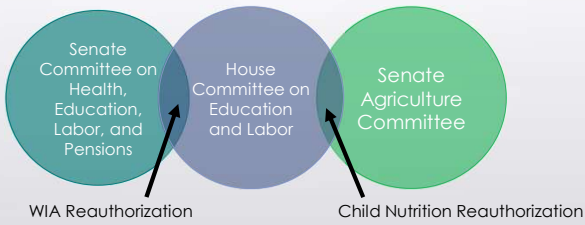
Other Agenda Items

- Child Nutrition Reauthorization
 - Last reauthorized in 2011 in Healthy, Hunger-Free Kids Act
 - Pandemic school closures revealed a lot about meal access
 - Supply chain issues
 - Whole family meals served
 - Incomplete data about poverty/hunger
 - Lack of data for FRPL having domino effect on other programs, necessitating waivers – are we over reliant on it?
 - Are sodium/ whole grain targets too high a bar?

Other Agenda Items

- WIA Reauthorization?
 - Last reauthorized in 2014 through the Workforce Innovation and Opportunity Act (WIOA)
 - House Committee Chairman Bobby Scott (D-VA), Ranking Member Virginia Foxx (R-NC) say:
 - Working on reauthorization
 - Will "offer[] workers the opportunity to gain in-demand skills and provides employers the talent they need to succeed and grow"
 - Will start with a series of hearings

Legislative Jurisdiction



Other Agenda Items

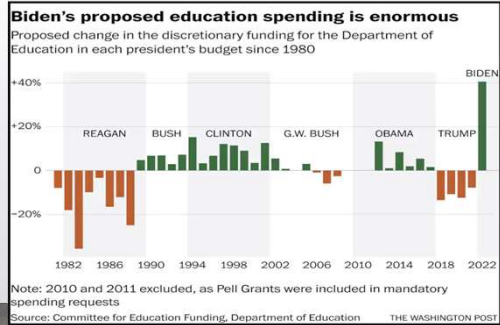
- Oversight of stimulus spending
 - [Government Accountability Office report](#) (March 2021) shows that there is little comprehensive data at federal level, and some of it is misleading
 - Cites ED data tool which only lists liquidated funds as "spent," not obligated funds
 - Some early reports of misspending of CARES Act funds
 - ED data reporting will likely raise additional questions as schools reopen
- Expect lots of interest from Congress on these questions too!

Other Agenda Items

- The return of earmarks
 - "Congressionally directed spending items"
 - Bargaining chip for lawmakers in appropriations process
 - General bipartisan support, with some concerns
 - Tendency toward corruption (or at least absurdity)
 - Promises of "transparency and accountability" this time around

Other Agenda Items

- Appropriations for FY 2022 and the President's "skinny" budget
- Budget proposal ("skinny" = "less detailed")
 - Doubling funding for Title I
 - Increase of \$2.6 billion for IDEA
 - More money for Head Start, CCDBG
 - "statement of values"
- But: Congress has the "power of the purse"



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Administration Updates

Staffing, New Policy, Waivers

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Major Staffing Updates

- Miguel Cardona → Secretary of Education, confirmed
- Cindy Marten → Deputy Secretary, approved by Committee
- James Kvaal → Undersecretary

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24

College Affordability Actions

1. Extension of federal student loan payment pause/interest set to 0%
2. Letter to Financial Aid Administrators reminding of allowance for "professional judgment" in HEA, which permits adjustments to students' eligibility based on individual exceptional circumstances
3. Changes to borrower defense relief
 - Rescinded DeVos partial relief formula; granted full relief to all previously-approved claims
 - Expected to make further changes to BD regulations

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College Affordability Actions

- 4. Changes to process for "total and permanent disability" loan discharge
 - Makes it easier to receive forgiveness and ensure debts are not reinstated
 - Not required to submit earnings documentation after relief for duration of COVID-19 emergency
- 5. Extended pause of loan interest and collections on privately-held Federal Family Education Loans
 - Retroactive to March 13, 2020

College Affordability Actions

- Future action?
 - Partial cancellation of federal student loan debt?
 - White House requested an analysis of executive authority to cancel debt from ED
 - Memo released prior to Biden admin taking office determining President does NOT have legal authority
 - Interpretation could change
 - Significant pressure from Democrats in Congress

American Families Plan – Infrastructure Part 2

- Unveiled in late April
- Proposal to address "human infrastructure"
- Significant investment in higher education
- Higher education proposals:
 - \$109 billion for free community college for anyone
 - \$80 billion for Pell to increase maximum by \$1,400
 - \$62 billion for completion/retention activities at certain institutions
 - \$39 billion for two years tuition at 4-year college for families earning less than \$125,000/year

American Families Plan – Infrastructure Part 2

- Other items:
 - Investment in teachers
 - Increased access to childcare for low- and middle-income families
 - Universal pre-school for three and four year olds
 - Expansion of free school meals

College Affordability – ED Staffing

- Chief Operating Office, Mark Brown, resigned
- New staffers include higher ed/equity advocates
 - Michelle Asha Cooper – Deputy Asst. Secretary for Postsecondary Education (Acting Asst. Sec)
 - Champion of educational equity; prior experience as deputy director of the Education Department's Advisory Committee on Student Financial Assistance
 - Julie Margetta Morgan
 - Sen. Elizabeth Warren's former senior education counsel; background advocating for student debt cancellation

College Affordability – ED Staffing

- New staffers include higher ed/equity advocates
 - Melanie Muenzer
 - Former Obama administration ED staffer
 - Joanna Darcus
 - Staff attorney at National Consumer Law Center; known student loan borrower advocate
 - Tariq Habash
 - Head of investigations at Student Borrower Protection Center; formerly worked on higher ed affordability issues at Century Foundation
 - Others with higher ed/college affordability experience

Assessment Flexibility SY 2020-2021

- [ED guidance issued in February](#)
- Generally, assessments must be conducted
- Encourages flexibility for testing:
 - Shortened versions;
 - Remote administration when feasible;
 - Extending testing window.
 - Especially for ELP assessments

Assessment Flexibility SY 2020-2021

- Waiver available:
 - Accountability and school identification requirements
 - Do not have to identify TSI, CSI, and ATSI schools with 2020-2021 data
 - Must continue to support already-identified schools and resume identification in fall 2022
 - Do not have to comply with certain reporting requirements
 - Waiver of requirement that the Academic Achievement indicator be adjusted to account for a participation rate below 95 percent
 - BUT must report chronic absenteeism data and data on student/educator technology access if receive waiver

Assessment Waiver Requests

- Most waiver requests to cancel assessments, make broad changes rejected
 - Some States requested cancellation
 - Others requested to substitute local assessments for State ones
- Some requests approved for modifying number of assessments given (Oregon, Colorado)
- D.C. granted blanket waiver to cancel assessments
 - Other States rejected

Assessment Waivers

- Push to cancel assessments from some lawmakers, education researchers, State education officials
- Cardona says having the data is necessary to inform future policy decisions
 - How reliable will that data be?
- Frustration over inconsistency of which States are granted waivers

Title IX Refresher

- Obama administration issued non-regulatory guidance on handling sexual assault complaints and investigations
- Rescinded by the Trump administration
- DeVos Dept. of Ed engaged in formal rulemaking process

Title IX Final Rule

- Went into effect August 2020
- Applies to both IHEs and K-12 schools
- Significant pushback from victims' rights organizations, Democratic lawmakers
 - Resulting in several legal challenges
- Considered a target for Biden admin to rescind/rewrite

Executive Order

- [Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity](#)
- Directs ED to review all policies related to sex discrimination but specifically names Title IX rule
 - Within 100 days of EO issuance (March 8th)

April OCR Letter on Title IX Review

- [Announces review mandated in March EO](#)
- Future steps:
 - Gathering additional stakeholder feedback via public hearing;
 - Issuance of Q&A on final rule;
 - Rule will remain in effect throughout review process
 - Notice of proposed rulemaking following public input/ED review.
 - Will include another public comment period

Title IX and Gender Identity/Sexual Orientation

- [January 20th: ED issued making Bostock SCOTUS case precedent governmentwide](#)
 - Says that Civil Rights Act of 1964 protects employees from discrimination based on gender identity or sexual orientation
- [March 26th: DOJ memo to federal agencies](#)
 - Concludes that Title IX protects from discrimination based on gender identity or sexual orientation
 - Informed by Bostock case

What's Next on Title IX?

- Biden administration position is clear that Title IX prohibits discrimination of LGBTQ students
- Being battled out in the courts
 - Several cases over past few years with contradictory conclusions in different federal circuits
 - *Gavin Grimm v. Gloucester County* case appealed to Supreme Court
 - SCOTUS has not determined whether it will hear the case
 - Likely to be addressed at SCOTUS at some point

Expected Stimulus Oversight

- 2020/2021 stimulus funding = unprecedented investment in education
- With large amounts of money, comes risk
- ED OIG has already begun oversight of some stimulus funding, more to come
- Expect lawmakers to request GAO analysis of funding and ED administration of grants
- Could inform future discussions and decisions on education funding moving forward

New Stimulus Guidance

- [EANS I guidance](#) (March 19)
- [Maintenance of Effort FAQs](#) for ARP (maintenance of equity guidance TBD) (April)
- ["Interim Final Requirements"](#) for ARP-ESSER (April 22)

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