



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

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**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

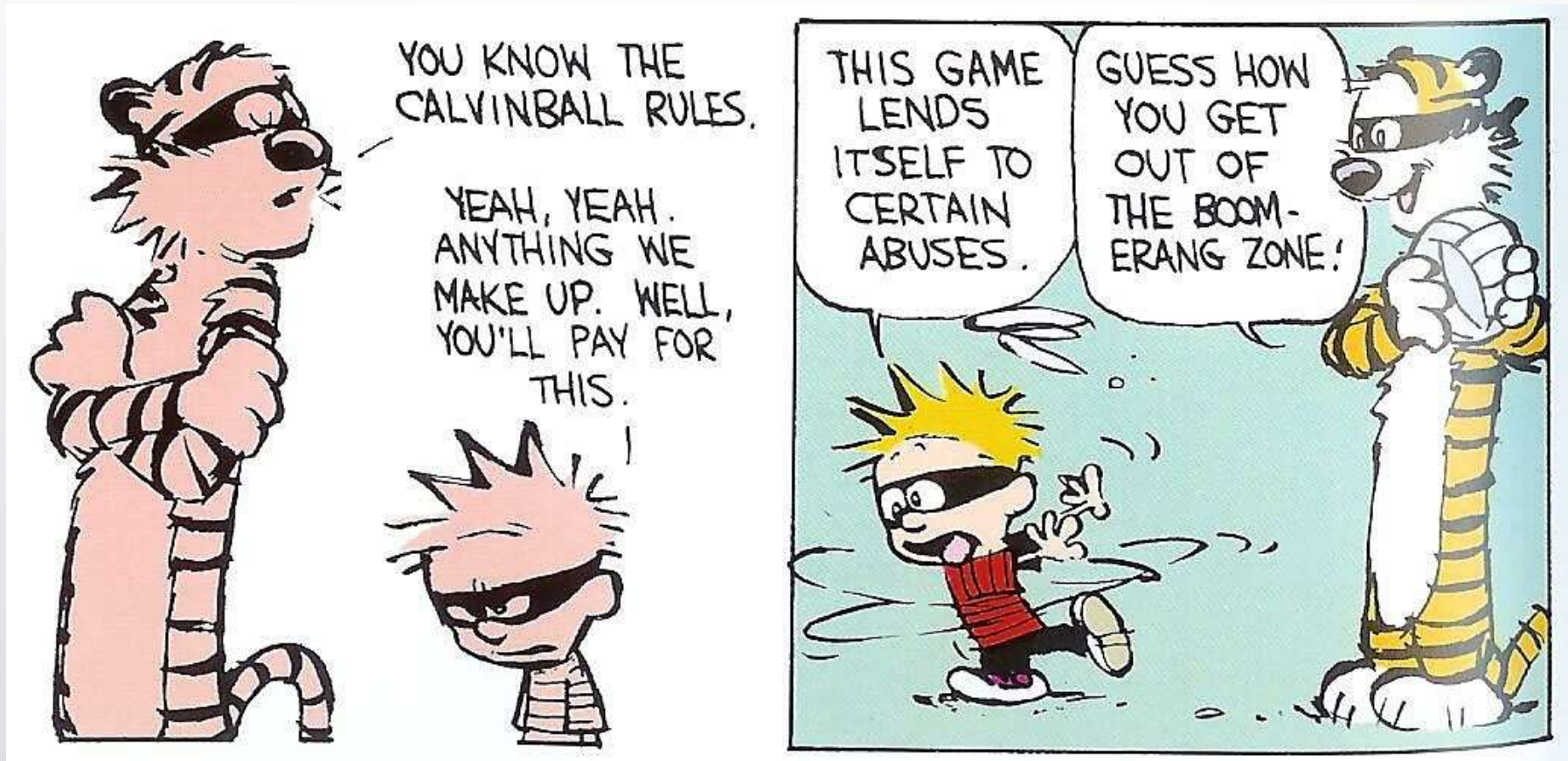
- Budget Reconciliation
 - Special legislative procedure introduced in the 1970's
 - Limited to budget measures → the Byrd rule
 - No impact on Social Security
 - Must impact budget within 10-year Congressional window
 - Impact must be more than merely incidental





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

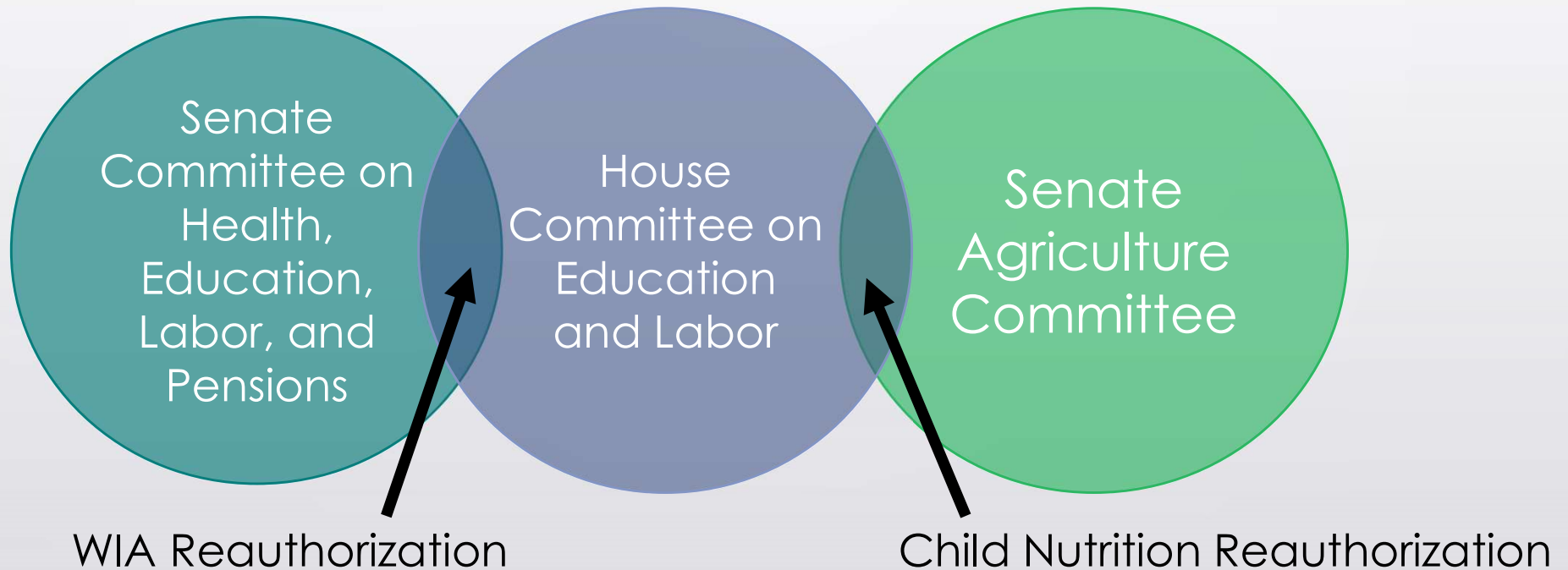
Other Agenda Items

- 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

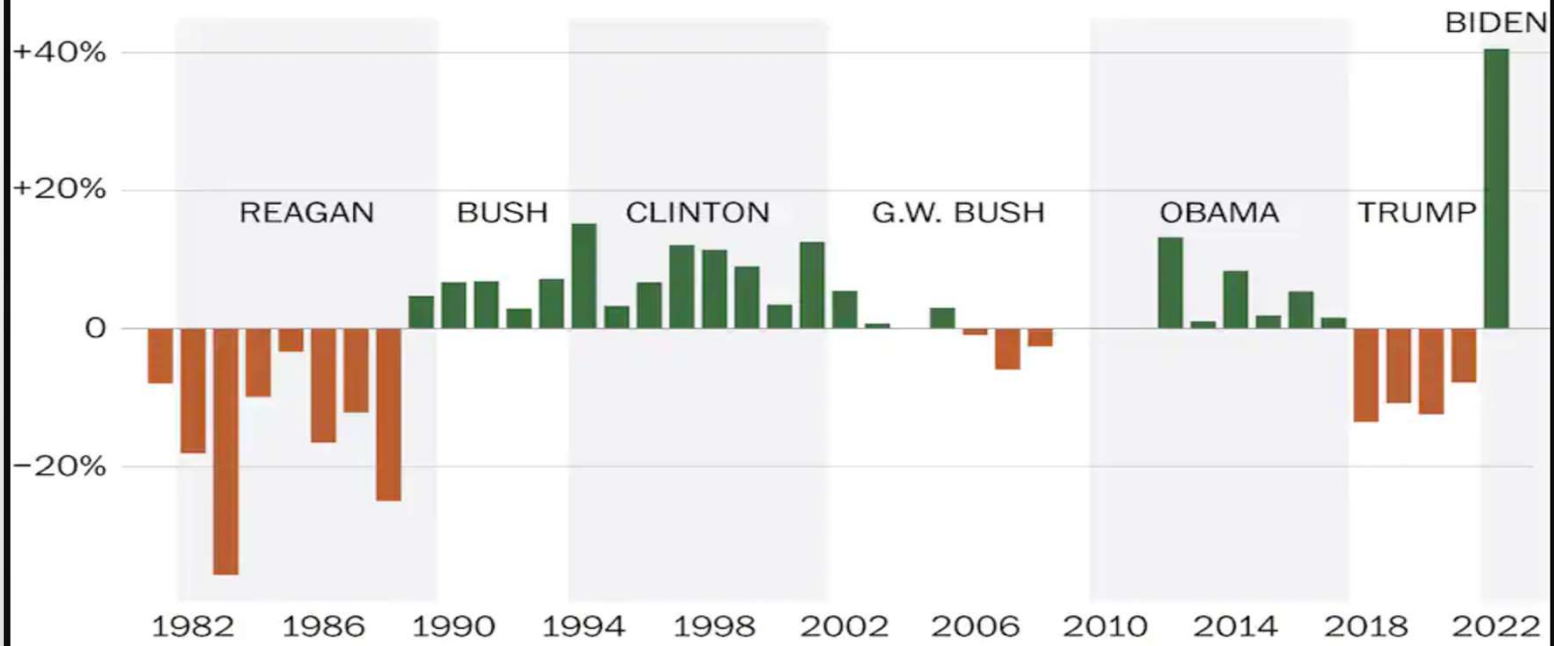
- The return of earmarks
 - “Congressionally directed spending items”
 - Bargaining chip for lawmakers in appropriations process
 - General bipartisan support, with some concerns
 - Tendency toward corruption (or at least absurdity)
 - Promises of “transparency and accountability” this time around

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"

Biden's proposed education spending is enormous

Proposed change in the discretionary funding for the Department of Education in each president's budget since 1980



Note: 2010 and 2011 excluded, as Pell Grants were included in mandatory spending requests

Source: Committee for Education Funding, Department of Education THE WASHINGTON POST



Administration Updates

Staffing, New Policy, Waivers



Major Staffing Updates

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



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



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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