

# The Federal Update for January 28, 2022

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Re: Federal Update

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## News

### Cardona Previews “Strong” Gainful Employment Rule

In a speech to U.S. Department of Education staff and stakeholders Thursday, Secretary of Education Miguel Cardona said that among his priorities for this year is the creation of a “strong” new gainful employment rule. That rule requires that career education programs that receive federal financial aid provide students with skills that allow them to obtain jobs, but was rescinded under the Trump administration in 2019, which said that it was unfair to for-profit colleges.

Cardona did not offer any details on what exactly a “strong” new rule would entail but said that he was committed to ensuring that “schools that focus on career programs aren’t leaving students with mountains of debt and without good job opportunities” and that “students will not be taken advantage of for financial gain.”

In the speech, Cardona also said that merely “reopening schools” for K-12 students is “critical” but “insufficient.” He laid out priorities including ensuring access to extracurricular activities and expanded learning time, increasing funding for Title I and IDEA, recruiting and supporting a “diverse educator workforce,” and making higher education “more inclusive and affordable.”

Resources:  
Michael Stratford, “Cardona Vows to Enact ‘Strong’ Gainful Employment Rule,’” *Politico*, January 27, 2022.  
Author: JCM

### Advocacy Groups Urge ESSER Extension

A group of education advocacy organizations wrote to Secretary of Education Miguel Cardona this week, asking the Secretary to extend the deadline for spending under the American Rescue Plan (ARP) to 2026. The groups say they are particularly concerned with the need for districts to update classrooms and improve school facilities because of the one-time nature of the funds. They point to urgent needs for heating replacement, roofing, new windows, and other projects even as “limited contractor availability” and supply chain disruptions make it difficult to complete projects before the ARP deadline in 2024.

The groups argue that they are simply asking for “more flexibility” in spending existing stimulus dollars and that such an extension would have “no budgetary impact on the federal government.” But it is the Congressional Budget Office (CBO) which would determine whether a legislative proposal “scores” – that is, whether it costs money against the U.S. Treasury. And it is Congress, not the U.S. Department of Education, which would have to make the decision to extend the funding deadline since the expiration of ARP is spelled out in the statute.

The groups signing the letter include the School Superintendents Association, the American Library Association, the Council of Chief State School Officers, the National Association of State Boards of Education, and the National Wildlife Federation. The [letter is available here.](https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/libfunding/school/CardonaSchoolFacilitiesLetterRequest.pdf)

Author: JCM

### Democrats Ask Biden to Release Memo on Student Debt Cancellation

More than a dozen Congressional Democrats signed a letter to President Biden this week asking him to release a U.S. Department of Education memo that discusses his authority to cancel federal student loan debt. The letter discusses the potential benefits that student loan debt cancellation would have for borrowers and the economy and cites COVID-19’s continued impact as a reason for the President to strongly consider granting relief. In the letter, the lawmakers renew their ask of the President to cancel $50,000 of student debt for borrowers, an amount frequently used in student debt cancellation discussions. While discussions on cancelling student loans have percolated throughout his presidency, President Biden has questioned whether he has the legal authority to do so. To clarify whether such authority exists, the Biden administration has reportedly prepared memos addressing this topic, although none have been released to the public unredacted.

The lawmakers claim that cancelling student debt would help borrowers “thrive” in the recovering economy and reduce the shock that would come with reinstating payments during high COVID-19 case counts and the related economic disruptions. The letter also cites data on the pandemic’s negative effect on student loan borrowers and argues that debt relief is a sensible step to ensuring that individuals and households are not overly burdened once payments resume, as some families changed their budgets during the interest moratorium. The letter also identifies how student loan debt impacts Black and Brown communities, as well as the elderly who still have student loan payments.

Despite the memo and the Democrats’ urging, it remains unclear whether the President has the authority to cancel student debt. Early last year, the Trump administration released a memo which concluded that the President did not have the authority to do so. While the Biden administration may come to its own conclusions about the President’s authority to cancel federal student loan debt, President Biden balked at cancelling the $50,000 requested by Democrats in a town hall event last year but seems to remain open to cancelling $10,000 through new laws passed by Congress.

[The letter can be viewed here.](https://pressley.house.gov/sites/pressley.house.gov/files/Letter%20to%20Biden%20Cancelling%20Student%20Loan%20Debt.pdf)

Resources:

Michael Stratford, “Dozens of Democrats Demand Biden Release Legal Memo on Student Debt Cancellation,” *Politico*, January 26, 2022.

Author: ASB

### ED Updates Semi-Annual Regulatory Agenda

The U.S. Department of Education (ED) updated its semi-annual regulatory agenda in a *Federal Register* notice to be published Monday. The update notes that ED plans to rework and publish new draft “gainful employment” regulations this year. The agency published a notice of intent to begin negotiated rulemaking on this and a handful of other topics last May – those sessions began earlier this month – and now says it plans to publish a draft gainful employment rule in July. Assuming a regular rulemaking process is followed, this could mean another year or more before a new final rule is in effect – sometime in the fall of 2023 or later.

The [update notice is here](https://public-inspection.federalregister.gov/2022-00822.pdf?utm_campaign=pi+subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email).

Author: JCM

## Reports

### OIG Releases Report on Implementation of TEACH Grant Flexibility

The U.S. Department of Education (ED)’s Office of Inspector General (OIG) recently released a report evaluating the implementation of Teacher Education Assistance for College and Higher Education (TEACH) grant flexibilities authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The CARES Act permits temporary flexibilities with regards to service obligations for TEACH grants, which provide financial assistance to students who plan to become a teacher in a high-need field or at a school serving a high proportion of low-income students. Should a student fail to meet the required obligations in exchange for the grant, the grants are turned into unsubsidized loans. Given the interruption of the COVID-19 pandemic, the CARES Act allows grant recipients to receive full-time credit toward their TEACH grant obligations for part-time or temporarily interrupted service.

ED OIG found weaknesses in Federal Student Aid’s (FSA’s) implementation and tracking of the CARES Act flexibilities, including identification of recipients who may not be eligible for the flexibilities and failure to identify eligible recipients in some instances. In addition, FSA did not provide adequate information and guidance to the TEACH grant servicer to allow for effective implementation of the flexibilities.

In the report, OIG recommends that FSA ensure communications are sent out to potentially eligible recipients, with detailed information explaining eligibility, and that more information be posted online for recipients to access. ED OIG also recommends that FSA provide better guidance to the TEACH grant servicer and that it improves its sampling process to review recipients potentially impacted by COVID-19. FSA agreed with most findings and recommendations provided by ED OIG, but disagreed with claims that FSA’s sampling process was not robust enough.

[The report is available here](https://www.oversight.gov/sites/default/files/oig-reports/ED/Department%E2%80%99s-Implementation-CARES-Act-Flexibilities-TEACH-Grant-Service-Obligations.pdf).

Author: KSC

### OSERS Submits Annual IDEA Report to Congress

The U.S. Department of Education’s (ED’s) Office of Special Education and Rehabilitative Services (OSERS) recently submitted its annual report on implementation of the Individuals with Disabilities Education Act (IDEA) to Congress.

The report includes data provided by States about students served under Parts B and C of IDEA, including the number of students served, number of personnel employed to provide services, student participation in assessments, and other data points. The data referenced in the report is primarily from the 2018-2019 school year and provides information both nationally and broken down by State. The report also discusses findings and determinations from ED’s annual review of States’ implementation of IDEA, covering determinations made in 2020. In addition, the report includes research conducted by the Institute for Education Sciences related to special education programs.

ED is required to submit a report annually to congress on the implementation of IDEA. [The full report is available here](https://sites.ed.gov/idea/2021-individuals-with-disabilities-education-act-annual-report-to-congress/).

Author: KSC

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of Brustein & Manasevit’s upcoming virtual trainings. Topics cover a range of issues, including COVID-19 related issues, grants management, the Every Student Succeeds Act, special education, and more. To view all upcoming virtual training topics and to register, visit* <https://bruman.com/training-and-recordings/>.

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