

# The Federal Update for February 4, 2022

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

Re: Federal Update

Date: February 4, 2022

[Legislation and Guidance 1](#_Toc94866983)

[ED Issues New Guidance on Addressing Teacher Shortages 1](#_Toc94866984)

[USDA Updates School Lunch Rules 2](#_Toc94866985)

[News 2](#_Toc94866986)

[ED Releases ARP ESSER Best Practices Tool for States 2](#_Toc94866987)

## Legislation and Guidance

### ED Issues New Guidance on Addressing Teacher Shortages

The U.S. Department of Education (ED) published two fact sheets this week aimed at addressing shortages of teachers and other key school personnel. The resources note that staffing challenges have been exacerbated by the pandemic and suggests ways in which federal stimulus dollars under the American Rescue Plan (ARP) and other resources can be used to help attract and retain staff.

Among the strategies suggested in the document are providing incentives like retention bonuses and loan forgiveness, increasing daily rates or creating full-time substitute positions to fill in when teachers are out, and improving working conditions by supporting mental health and creating peer-to-peer support systems. The document also notes that AmeriCorps members may serve as tutors and be given administrative responsibilities (and that federal funds like ARP may be used to meet AmeriCorps matching requirements). In the long term, ED suggests that increased wages and investments in teacher training and the “educator pipeline” could help alleviate staffing issues.

In another similar document, ED suggests increasing pay and benefits for support staff, providing targeted incentives, especially for hard-to-fill positions, and providing flexibility for retirees to substitute or serve as paraprofessionals. In this second document, ED highlights the type of staff positions that have been hard to fill in recent months, including nurses, bus drivers, substitute teachers, and mental health counseling positions. Both documents contain examples of recent practices implemented to fill staff positions using these funds.

The [document on teacher shortages is here](https://www2.ed.gov/documents/coronavirus/arp-teacher-shortages.pdf); information on supporting [other school staff is here](https://www2.ed.gov/documents/coronavirus/arp-staff-shortages.pdf).

Author: JCM

### USDA Updates School Lunch Rules

The U.S. Department of Agriculture (USDA) released new interim final regulations today which reinstate some meal pattern requirements eliminated under the Trump administration, starting in the 2022-23 school year.  The rule will impose slightly stricter limits on sodium, bringing lunches to what had previously been called “Target 1” in the coming year and lowering the sodium limits to “Interim Target 1A” the following year.  Schools will continue to be allowed to serve one percent flavored milk in the coming school year for students ages six and up, with more changes expected after that period. At least 80 percent of the grains serve in school lunch and breakfast in the week will also have to be whole-grain rich.

During the current school year, schools are operating under meal pattern waivers which preclude the application of these standards.  The plan to institute stricter standards indicates that USDA does not plan to offer these waivers – which also allow all students to participate regardless of income – in the 2022-23 school year.  In the discussion of the rule, USDA says that it plans to transition schools gradually to the new standards, noting that the pandemic and related supply chain issues would present significant barriers to an immediate transition.

For the most part, the proposed rule relies on public comments submitted in 2012 and prior to the previous standards being rescinded in 2018. The agency says that it will soon propose a new rule for 2024-25 which will involve more stringent standards – but will solicit significant public comment before publishing this updated rule.

The rule published today will become effective July 1, 2022. Comments may be submitted within 45 days after the publication date, but USDA has not committed to making changes based on those comments. The text of the rule, which will be formally published Monday, [is available here](https://public-inspection.federalregister.gov/2022-02327.pdf).

Author: JCM

## News

### ED Releases ARP ESSER Best Practices Tool for States

The U.S. Department of Education (ED) and the National Comprehensive Center, one of ED’s technical assistance partners, released a new tool this week to assist States with spending their American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) funds. The tool, called the ARP Partnership, Assistance, Transformation, and Heightened Support (PATHS) tool, allows States to share their progress in spending down the funds, as well as share the specific activities the money has been used for.

ED does not require States to use the new tool, but encourages its use so that other States may benefit from seeing best practices of ARP implementation. The tool is broken out into different categories which States can report on. These categories align with the ARP ESSER State plan and the requirements in the statute for how States and local educational agencies must spend their funds. For instance, States can report how they have used their funding to address the impact of lost instructional time. For each category, a State can indicate its status of implementation, including “full implementation,” “initial/ongoing implementation,” “planning underway,” and “exploration.”

Regardless of which status is indicated, States can also provide detail on the specific activities being implemented with ARP ESSER funding.

[The ARP PATHS tool is available here](https://compcenternetwork.org/resources/resource/7150/arp-partnership-assistance-transformation-and-heightened-support-arp-paths).

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/>.

***The Federal Update has been prepared to inform Brustein & Manasevit, 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 Brustein & Manasevit, PLLC and the reader.***

© Brustein & Manasevit, PLLC 2022

Contributors: Julia Martin, Kelly Christiansen

Posted by the California Department of Education, February 2022

[www.bruman.com](http://www.bruman.com/)