

# The Federal Update for February 11, 2022

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Re: Federal Update

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## Legislation and Guidance

### Congress Plans Short-Term Spending Measure to Avoid Shutdown

The House of Representatives passed a stopgap spending measure Wednesday which will fund the government through March 11th. This bill – which is awaiting action in the Senate – continues federal programs at current levels while lawmakers finalize program-level spending legislation for federal fiscal year (FY) 2022.

Leadership in the House and Senate has expressed frustration that it has taken so long to agree on funding levels, but expressed optimism that full-year appropriations would be finalized soon. Expected sticking points include the balance between defense and non-defense spending (referred to as “parity”), controversial policy riders on topics like abortion, and the total amount of spending in contrast to the deficit.

Among the questions being finalized is whether and how much to increase funding for education programs. In June of 2021, lawmakers in the House passed a spending bill that would include significant increases – most ranging from 5-10 percent – for many formula funded education programs and would double the spending for Title I of the Elementary and Secondary Education Act. Those increases – if adopted in a full-year appropriations bill – would go out to States starting in July of this year.

Author: JCM

### Senate Passes Bill on Workplace Harassment

Following House passage earlier this week, the Senate passed a bill on Thursday that prohibits employers from requiring their employees to settle sexual harassment claims through mandatory arbitration, as opposed to in court. The practice of including mandatory arbitration clauses in employment contracts came to greater light as a result of the Me Too movement.

The legislation goes into effect immediately and applies retroactively for any employees who have signed a contract containing a mandatory arbitration clause. In addition, the legislation does not prohibit the use of arbitration if an employee prefers that option over settling the claim in court, but employers cannot force employees to engage in arbitration.

The House passed the legislation earlier this week and President Biden is expected to sign it into law.

Resources:

Eleanor Mueller, “Senate Clears #MeToo Bill Banning Mandatory Arbitration,” *Politico*, February 10, 2022.

Author: KSC

## News

### ED Releases Proposal for Gainful Employment

On Monday, the U.S. Department of Education (ED) released a series of draft regulatory proposals, including new requirements on consumer disclosures, as part of an overhaul of higher education rules. A negotiated rulemaking committee has been tasked with drafting regulatory language for a number of higher education issues, including gainful employment.

According to the proposal, the disclosure requirement will help provide students with information about program outcomes. The proposal seeks to set up a website, maintained by the Secretary, where students can access information on completion rates, median debt, loan repayment, and median earnings. The consumer disclosures are part of ED’s proposal to reinstate regulations on gainful employment, which were rescinded by the Trump administration. This portion of ED’s proposal would apply to all institutions, not just for-profit colleges, but non-profit colleges would not be subject to the other requirements in the proposal, such as the risk of losing federal funding as a result of low-performing programs.

ED’s proposal largely tracks with the prior gainful employment requirements, which were promulgated under the Obama administration, but may add additional metrics for colleges to comply with. Currently, ED is seeking to use a debt to earnings ratio to determine program performance and compliance – the same metric used under the prior rule.

The negotiated rulemaking committee will use ED’s proposal as a basis for discussions in its next meeting. The committee will meet again next week, with a final meeting in March. Negotiators are required to reach full consensus on the regulatory language they draft for the rule to move forward. If consensus is not reached, then ED is able to propose its own rule.

Resources:

Jennifer Scholtes and Sarah Ferris, “Biden Administration Proposes New Consumer Disclosures for All Colleges,” *Politico*, February 8, 2022.

Author: ASB

### Senators Question Enforcement of Teacher Misconduct Laws

In a letter sent to Secretary of Education Miguel Cardona this week, Senators Pat Toomey (R-PA) and Joe Manchin (D-WV) expressed concern about whether the U.S. Department of Education (ED) is enforcing a provision of law designed to prevent teachers who have engaged in sexual misconduct to move schools and avoid disciplinary action.

Section 8546 of the Elementary and Secondary Education Act, as amended in 2015, requires State and local educational agencies to have laws, regulations, or policies in place to stop this practice, known colloquially as “passing the trash.” The senators state that a report in 2018 found that only four States were fully in compliance with this provision. ED sent a letter to States reminding them of their responsibilities, but the senators say that they are concerned about a lack of follow-through. They ask Cardona and his staff to respond to a number of questions about enforcement and monitoring, as well as when a planned report on this policy might be released.

Without such policies in place, according to a 2010 report from the Government Accountability Office, school officials allowed teachers accused of misconduct to resign and apply to other school districts without the allegations being noted on their record – in many cases, providing the teachers with positive references.

The [Manchin/Toomey letter is here](https://www.manchin.senate.gov/imo/media/doc/letter_to_secretary_cardona_regarding_esea.pdf?cb).

Author: JCM

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