

# The Federal Update for March 11, 2022

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Re: Federal Update

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## Legislation and Guidance

### Congress Passes Omnibus Bill as Focus Shifts to Foreign Aid

Congress passed an omnibus appropriations bill for federal fiscal year (FY) 2022 this week, paving the way for President Biden to sign the spending package into law later today.

The legislation provides a slight boost to education funding, but the final appropriations differ dramatically from proposals in the House and Senate last summer, which would have doubled funding for Title I of the Elementary and Secondary Education Act. Instead, most programs will see increases of around six to eight percent, just enough to keep up with the rate of inflation.

A number of program funding levels are highlighted in the table below, in thousands of dollars:

| **Program** | **FY 2021 Appropriation** | **FY 2022 Appropriation** | **Difference** |
| --- | --- | --- | --- |
| Title I, Part A | $16,536,802 | $17,536,802 | $1,000,000 |
| IDEA Part B | $12,937,457 | $13,343,704 | $406,247 |
| Title II, Part A | $2,143,080 | $2,170,080 | $27,000 |
| Title IV, Part A | $1,220,000 | $1,280,000 | $60,000 |
| Title IV, Part B | $1,259,673 | $1,289,673 | $30,000 |
| McKinney-Vento | $106,500 | $114,000 | $7,500 |
| Career and Technical Education | $1,342,269 | $1,379,848 | $37,579 |
| AEFLA | $674,955 | $690,455 | $15,500 |
| Impact Aid | $1,501,112 | $1,557,112 | $56,000 |

Lawmakers also approved $162 million in educator pipeline programs through Hawkins Centers of Excellence, the Individuals with Disabilities Education Act, and Teacher Quality Partnerships and increased the maximum Pell grant to more than $5,800. Colleges that received funding under the Higher Education Emergency Relief Fund allocation for minority-serving and historically Black institutions will be able to use those funds for construction and real property costs that directly relate to “preventing, preparing for and responding to coronavirus.” In addition, the bill includes funding for specific education initiatives at colleges, universities, and school districts in the form of Community Project Spending, known colloquially as earmarks. The bill provides $140 million for K-12 initiatives and $249 million to colleges and universities for varying projects.

But the bill itself was not without controversy. A new tranche of pandemic research and treatment funding proposed by the White House was cut at the last minute when some lawmakers objected to the proposed offset—clawing back unspent State and Local Fiscal Relief Fund money from a number of States with split allocations, primarily States in the Midwest.

And lawmakers were divided over whether or not to authorize an extension of child nutrition waivers which allow all students to receive free meals without the need for an application. Several advocacy groups, members of Congress, and the U.S. Department of Agriculture (USDA) expressed their support for the program, which also alleviates some supply chain concerns by lifting the meal pattern requirements, but ultimately, Senate Minority Leader Mitch McConnell (R-KY) and others said that the waivers were no longer necessary since they were a product of pandemic-related school closures and expressed concern that the estimated $11 billion in waivers would primarily benefit students whose families don’t truly need the benefit. McConnell also blamed the Biden administration for failing to include the waivers in its fiscal year 2022 budget request, filed with Congress last spring. A last-minute amendment filed by Senator Debbie Stabenow (D-MI) to restore the waivers failed to gain traction on the Senate floor.

With the waivers off the table, school nutrition advocates and professionals say they are concerned about the rising costs of food and fuel amid the Russian invasion of Ukraine and question whether school meal programs will be financially viable in future years. USDA can still implement waivers of some requirements—including meal pattern waivers—but unless Congress changes its mind at a later date, schools will be back to collecting school meal program applications in the fall.

Author: JCM

### Extending Timelines for COVID Relief Aid Still Debated in D.C.

During the past two years, State educational agencies (SEAs), local educational agencies (LEAs), and colleges have received federal stimulus relief funding to respond to the pandemic’s unique challenges. At least $190 billion in COVID-19 relief funding has been committed or disbursed to these grantees. Consequently, many schools, districts and State agencies now find themselves rushing to adequately use these funds before their expiration date.

Earlier this year, the School Superintendents Association and other key stakeholders asked Secretary of Education Miguel Cardona to extend the timeline for the American Rescue Plan (ARP) Elementary and Secondary School Emergency Relief (ESSER) funds until December 2026. The letter states that many school districts want to use the funds for facility upgrades such as construction and capital projects, which take time due to “limited contractor availability and supply chain disruptions.”

One way to extend the deadline of federal awards is through a waiver of the General Education Provisions Act (GEPA) period of availability, also known as the “Tydings Amendment,” provided in GEPA Section 421 (20 U.S.C. 1225(b)). Unless otherwise restricted by a program statute, the Tydings Amendment provides a one-year carryover period for education grants.

ED applies the Tydings Amendment to the ESSER and Governor’s Education Emergency Relief (GEER) award periods, which extends the period of availability for ARP ESSER and GEER through September 30, 2024. However, to continue the award period beyond one year, ED needs Congressional authority to waive the Tydings Amendment. Given that Congress has seemed reluctant to provide additional pandemic-related flexibility or relief in the appropriations bill, a legislative solution here seems unlikely.

However, Congressional action is not necessary to extend only the liquidation period. Instead, per 2 CFR 200.344(b), federal awarding agencies (ED in this case) and pass-through entities (SEAs) can authorize an extension to liquidate valid obligations made during an award period. Typically, liquidation periods can be extended for 12 months without significant administrative burden, but ED has recognized longer extensions in special circumstances. In fact, the U.S. Department of Treasury (Treasury) offered this flexibility to Coronavirus Relief Fund (CRF) recipients.

The CRF award period ended December 30, 2021, and Treasury had previously stated that all goods must be received, and services performed by that date. However, in light of the supply chain interruptions and ongoing waves of the pandemic, Treasury revised its guidance to acknowledge that only obligations must be incurred by the period end date, and further noted that recipients could liquidate those valid obligations for an extended period: through September 30, 2022.

Here, ED could offer similar guidance—requiring grantees to obligate ESSER/GEER funds by the ARP period end-date (September 30, 2024), but offering an extended period in which to liquidate those obligations. SEAs too could pass this flexibility down to LEAs. This would allow for contracted goods and services to continue past the period end, so long as the binding written commitment was made during the period. One limitation, however, is that grantees would not be able to pay for salaried employees for work performed after the September 30, 2024 deadline, as employee compensation is obligated when employees render their services (34 CFR 76.707).

Institutions of higher education are seeing some relief—in a webinar and informal communications this week, ED told grantees that it would automatically extend the period of availability for Higher Education Emergency Relief Fund (HEERF) grants with a balance of $1,000 or more. A forthcoming *Federal Register* notice will detail this extension, which adds to the one-year period of availability originally provided to grantees under HEERF, extending the period for all HEERF awards to June 30, 2023. Similar to States and districts, colleges could seek an extension of the liquidation period per 2 CFR 200.344(b) in order to have additional time to liquidate valid HEERF obligations, such as contracted goods and services, after the June 30, 2023 period end-date.

Author: MPM

## News

### Fact Sheet Shows Breakdown of Higher Ed Stimulus Distribution

A fact sheet released by the White House this week, ahead of the one-year anniversary of the passage of the American Rescue Plan Act, includes information on how higher education COVID-19 stimulus funding was distributed among institutions of higher education.

Minority-serving institutions, including Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, Hispanic-Serving Institutions, and Asian American and Native American Pacific-Islander-Serving institutions received almost half of the overall pot of the Higher Education Emergency Relief funding, which included approximately $40 billion total. In addition, over $10 billion in HEERF funding was distributed to community colleges.

Institutions of Higher Education (IHEs) were required to spend about half of their funding on direct grants to needy students, but the remaining funds could be used at the institutional level to address challenges associated with the COVID-19 pandemic. A survey conducted by the American Council on Education, noted in the White House Fact Sheet, found that IHEs have used funds to continue paying their employees throughout the pandemic, to provide additional direct assistance to students, to keep tuition levels equal to pre-pandemic levels, and to purchase COVID-19 mitigation supplies such as tests and personal protective equipment. In addition, many IHEs have used the funding to wipe away student debt and unpaid balances.

The White House Fact Sheet also links to an individualized fact sheet for each State, where stakeholders are able to see specific amounts of funding that were distributed to colleges within that State.

[The White House fact sheet is available here](https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/07/fact-sheet-department-of-education-announces-state-by-state-american-rescue-plan-funding-for-colleges-and-universities/).

Resources:

Bianca Quilantan, “Nearly half of college Covid relief went to minority-serving institutions,” *Politico*, March 7, 2022.

Author: KSC

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