

# The Federal Update for April 1, 2022

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Re: Federal Update

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## Legislation and Guidance

### House Committee Circulates WIOA Reauthorization Discussion Draft

Representative Bobby Scott (D-VA), Chairman of the House Education and Labor Committee, released this week a draft bill to reauthorize the Workforce Innovation and Opportunity Act (WIOA). This mammoth bill, which covers workforce training for youth, adults and dislocated workers (Title l), Adult Education and Family Literacy (AEFLA) (Title ll), Wagner Peyser (Labor Market Information) (Title lll), and the Vocational Rehabilitation Act (Title lV), was last reauthorized by Congress in 2014. The Departments of Education and Labor needed two years to promulgate program regulations, and the first Four Year Unified Plans and Combined State Plans covered the period 2016 to 2020. States and locals are now operating under the second Four Year Plan, which runs through 2024.

The Committee discussion draft contains several substantive changes to current law. Significantly, it would require the development by local workforce boards of a Comprehensive Local Needs Assessment (CLNA), similar to the current requirement in the Perkins Career and Technical Education statute, to develop strategies for reducing performance gaps for basic skills deficient students and “opportunity youth” (individuals aged 16 to 24, not attending school, and not employed). The bill incorporates the new responsibilities under Perkins for work-based learning and the “evidence based” strategies under the Elementary and Secondary Education Act (ESEA). Local boards would need to work more closely with K-12 partners for assessments on all the ESEA identified subgroups. The proposed language has a greater focus on equity, requiring demographic diversity on both State and local boards, and requires “labor” representation on the boards of up to 30%. Local boards would also need to establish standing committees to represent adult literacy, youth, etc.

The bill amends the performance indicators which govern Titles l, ll and lV; States and locals would need to report on median earnings at the fourth quarter following exit from the WIOA supported activity, the percent of participants earning multiple postsecondary credentials, and must demonstrate “continuous improvement” on the levels of performance. The State must publish the disparities in performance for the targeted subgroups.

The draft also adds a number of “reserves” or “set asides” to the funding requirements, which likely will impose a burden on compliance with the Uniform Guidance rules on time and effort certifications. Each set aside serves as a separate “cost objective”, and therefore any effort on that activity would need to be reflected in contemporaneous effort reports. For example, the AEFLA currently has a 5% cap on local administration, and professional development activities are counted as part of local administration. The bill would separate out professional development with a cap of 5% of the award. While this change would be very welcome among adult literacy providers, it still adds the responsibility to track the hours spent on administrative responsibilities and professional development activities separately.

The bill requires under Title l for youth training that at least 75% be expended for “opportunity” youth or at-risk youth, of which at least 50% would be for summer and year-round employment, and at least 5% for emergency needs to allow youth to complete training. From the adult and dislocated worker training funds under Title l, at least 50% must be expended on those with the highest needs. “Supportive services” for those with the highest needs would be a required expenditure, and the list of such supportive services would include mental health care as well as accessing the internet, and assistance with digital and financial literacy.

Brustein & Manasevit, PLLC will closely monitor developments on this reauthorization.

Author: MLB

### White House Proposes Big Increases to Title I, IDEA, Pell for 2023

In a fiscal year (FY) 2023 budget proposal sent to Congress on Monday, President Biden asked lawmakers to increase funding by about 15% across the Department of Education (ED), focusing on core formula funding programs. However, advocates note that while this would represent the biggest dollar increase in funding, the final numbers would be less than 2011 funding levels if adjusted for inflation.

The biggest increase would come in Title I – for which the President proposed $36.5 billion, double the current amount and split between discretionary funding and mandatory spending – the latter of which would not be subject to certain budget restrictions and reductions. The President also proposed an increase of $3 billion for State Grants under the Individuals with Disabilities Education Act, an increase of about 24%. Head Start would see an increase of 10% under this program, Child Care and Development Block Grant spending would increase by 23%, and Preschool Development Grants would increase by 55%.

The proposal would increase the maximum Pell grant by $1,775 to $8,670 per year. But some higher education programs would see small reductions, including the Federal Supplemental Educational Opportunity Grant and Federal Work-Study. Career and Technical Education would see a small decrease – less than 2% – from this year, but Adult Education would see an increase of almost 5%.

In an attempt to address new concerns on mental health and teacher shortages, the budget also contains $1 billion for schools to higher additional school psychologists and counselors, and $514 million for the Education Innovation and Research program to improve staff retention and recruitment initiatives. The budget also proposes significant increases in funding for staffing within ED, focusing on student aid administration and the Office for Civil Rights.

In his proposal for the Department of Agriculture, Biden suggests funds to enforce anti-competition rules in food prices and bring down inflation – major concerns for school food programs dealing with supply chain issues and increased costs.

The budget proposal now goes to Congress. Lawmakers are expected to produce a draft appropriations bill some time in late spring or early summer, with the goal of passing a final bill before the start of the new fiscal year on October 1.

Author: JCM

### ED Releases Proposed Guidance on ESEA Title VIII Equitable Services

The U.S. Department of Education (Department) released proposed guidance this week on the Elementary and Secondary Education Act (ESEA) Title VIII equitable services that clarifies existing guidance and consolidates all existing relevant guidance into a single document. To distinguish the new material, the document notes that guidance already published in other documents is highlighted in gray. The new material briefly addresses consultation; allocations and expenditures; delivery of equitable services; and program specific requirements related to the provision of equitable services under Title I, Part C (Migrant Education Program); Title II, Part A (Supporting Effective Instruction); Title IV, Part A (Student Support and Academic Enrichment Grants); and Title IV, Part B (21st Century Community Learning Centers) (21st CCLC), among other topics.

The guidance clarifies that while charter school LEAs are generally not required to provide equitable services to children in private schools, under discretionary grant programs and the 21st CCLC program, charter school LEAs are required to do so if children are not otherwise served under the same program by a traditional LEA in the area. The guidance also clarifies that LEAs should calculate the per-pupil funding for equitable services based on public and private school data from the previous school year. Also, under Title VIII as under Title I, LEAs may choose to provide equitable services to children and educators on a school-by-school basis, by pooling within an LEA, or by pooling across LEAs.

Notably, this guidance clarifies some points in calculating the proportionate share. It suggests that transportation may be considered an administrative cost for purposes of equitable services, and should be taken off the top of an LEA’s total allocation. Transportation costs must still be reasonable and necessary to provide services. Additionally, only the number of children or eligible children in private schools that wish to participate in the program should be used in calculating the proportionate share, not the total number of private school children in the LEA.

Under the program specific requirements, the guidance discusses the Migrant Education Program (MEP), Title I, Part A, and 21st CCLC. Specifically, the guidance highlights the purpose of the MEP program to help migratory children overcome educational disruption and cultural and language barriers and clarifies that SEAs must identify the needs of all migrant students. When it comes to providing equitable services under Title II, Part A, the guidance covers what activities an LEA may provide to private school educators, and what considerations must inform decisions regarding professional development and payment for conference registration and costs. The guidance also highlights who is eligible to apply for services under Title IV, Part B, including whether an eligible entity must target services to certain children, and the consultation requirements for a 21st CCLC subgrantee.

[A full copy of the new guidance can be found here.](https://oese.ed.gov/files/2022/03/Draft-Title-VIII-Equitable-Services-Guidance.pdf)

Author: ASB

### Guidance Offers New Options to Address Teacher Shortages

A new web page published on the website of the U.S. Department of Education (ED) describes a number of ways in which it says that stimulus funds can be used to support teacher preparation, development, recruitment, and retention.

Citing earlier guidance on stabilizing the educator workforce, ED says that funds under the Elementary and Secondary School Education Relief Fund (ESSER) and the Governors Emergency Education Relief Fund (GEER) may be used to pay monthly student loan payments on behalf of teachers who enroll in income-driven repayment programs. Grantees would need to ensure that the teachers make a commitment to serve in a high-need field or school, and the expense must be tied to preventing, preparing for, or responding to the pandemic and its impact on the needs of students. If using funds for loan payments, grantees should also “clearly communicate with and advise graduates about the availability of” programs like Public Service Loan Forgiveness, TEACH grant, and Teacher Loan Forgiveness initiatives. Funds could also be spent to provide tuition assistance or reimbursement for similar programs.

Higher Education Emergency Relief Funds (HEERF) could go to a number of teacher preparation activities under this guidance. ED states that those grant funds could be used for the cost of additional courses or test fees to obtain teacher certification or licensure, to expand an institutions educator preparation program “in response to the pandemic,” especially in areas like special education and bilingual education, and discharging student loans, debts, or unpaid balances.

The guidance also suggests that HEERF grant funds can be used to offer “stipends, scholarships, and other financial aid to educators-in-training to help underwrite the cost of preparation.” Notably, previous HEERF guidance has not allowed generalized scholarships or tuition reduction, instead focusing on open-ended assistance to students with “exceptional need.”

[This new teacher shortages guidance is available here](https://www.ed.gov/coronavirus/factsheets/teacher-shortage).

Author: JCM

## News

### White House Readies Title IX Rule for Release

A rule which would modify the regulations regarding sexual harassment and assault under Title IX of the Education Amendments of 1972 is reportedly at the White House undergoing final review. That rule is expected to amend the procedures for adjudicating allegations of harassment and assault, but also – and more controversially – to define the term “sex” to include gender identity and sexual orientation.

This anticipated definition would put federal civil rights policy squarely in opposition to many State laws passed as late as this recent spring legislative session. It will likely draw litigation from a number of States whose schools would face threats of withholding of federal funds if they implement those State policies on the books.

The Office of Management and Budget has scheduled stakeholder meetings on the rule through the third week of April. A draft rule could be published as early as the end of April, but before it is finalized will be open for public comment. It is unlikely that a final rule would go into effect before the start of the 2022-23 school year.

Author: JCM

## Reports

### Senate Mental Health Report Raises Alarm on Children and Young Adults

A report issued this week by the Senate Finance Committee summarizes fact-finding efforts conducted by the Committee on mental health over the course of the COVID-19 pandemic. In the introduction, Committee Chair and Senator Ron Wyden (D-OR) focuses on the increased need for mental health care among young adults and the general lack of medical infrastructure to provide it.

The report asserts that mental health challenges have increased steadily in recent years, with a dramatic increase in unmet needs during the COVID-19 pandemic. The report notes that there are very few child psychiatrists, and asserts that telehealth has proven difficult for children who lack privacy at home or who are in underserved areas. It calls out school-based mental health services as an important – but underfunded – resource for many students.

The [mental health report is available here](https://www.finance.senate.gov/imo/media/doc/SFC%20Mental%20Health%20Report%20March%202022.pdf).

Author: JCM

*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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