

# The Federal Update for September 23, 2022

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

Re: Federal Update

Date: September 23, 2022

[Legislation and Guidance 1](#_Toc114821448)

[Congress Preparing to Pass Temporary Spending Measure 1](#_Toc114821449)

[ED Formalizes ARP ESSER Plan Amendment Process 2](#_Toc114821450)

[News 2](#_Toc114821451)

[Minnesota Nonprofit Involved in Large-Scale Stimulus Fraud Scheme 2](#_Toc114821452)

## Legislation and Guidance

### Congress Preparing to Pass Temporary Spending Measure

Congress is preparing to pass a continuing resolution (CR) next week to extend current levels of federal funding into mid-December, as the beginning of fiscal year (FY) 2023 approaches on October 1st.

Lawmakers have been in negotiations since returning from their August recess earlier this month on a package to extend federal funding and avert a government shutdown on October 1st, as well as to provide additional funding to Ukraine and other policy provisions. Still undetermined is whether the legislation will include energy permitting provisions to follow through on a deal made with Senator Joe Manchin (D-WV) earlier this year in exchange for his support on Democrats’ climate and healthcare legislation. Many senators, both Democrat and Republican, have expressed opposition to including the energy piece as part of the CR legislation. In addition, although lawmakers have reached an agreement to include additional funding for Ukraine, the amount of that assistance is yet to be decided.

With these remaining issues in flux as the end of fiscal year 2022 quickly approaches, there could still be challenges ahead. However, given the upcoming midterm elections, lawmakers are unlikely to allow the government to shut down next week. The Senate is tentatively planning on taking a vote early next week, assuming legislation has been finalized by then, after which the bill will be sent to the House for approval.

Pushing the funding deadline into December will allow lawmakers additional time to fully negotiate legislation for FY 2023, as well as time to focus on campaigning for the midterm elections. Depending on the results of the midterm elections, lawmakers may push to extend temporary funding into 2023 and allow the 118th Congress to make the final funding decisions for the new fiscal year.

Resources:

Caitlin Emma, “Senate moves forward to fund government despite snags over Manchin’s energy plan,” *Politico*, September 22, 2022.

Author: KSC

### ED Formalizes ARP ESSER Plan Amendment Process

In a letter to States this week, the U.S. Department of Education (ED) laid out the process it expects States to follow when making changes to services planned for in the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) State plan. While ED says that it understands that “States may need to revise and strengthen” their State plans in order “to better address the evolving educational needs of children as you lead academic recovery efforts,” the agency is setting out a formal State plan amendment process for those changes.

The letter is specific to Section D of the ARP-ESSER State plan, which lays out how States should spend their State-level set-aside on activities to address the impact of lost instructional time, including afterschool and summer programs. States submitted their original plans to ED in the spring and summer of 2021, but ED indicates many States say their needs have changed.

In order to make a State plan amendment, States must “engage in meaningful consultation” with the group of stakeholders outlined in the original State plan document and provide public notice and the opportunity to comment.

ED has committed to processing amendments “as efficiently as possible,” but this additional step will likely slow down the spending process for States.

Author: JCM

## News

### Minnesota Nonprofit Involved in Large-Scale Stimulus Fraud Scheme

The U.S. Department of Justice announced charges against 47 individuals this week, alleging that they participated in a massive scheme to defraud the federal government of $250 million in U.S. Department of Agriculture (USDA) stimulus funds. The indictment claims that Aimee Bock, the executive director of a Minnesota nonprofit called Feeding Our Future, and other defendants used the organization to submit reimbursements for food services provided under federal child nutrition programs designed to provide food to low-income children and adults. Other defendants face charges of conspiracy, wire fraud, money laundering, and paying and receiving illegal kickbacks.

The Minnesota State Department of Education administers the funds but does not necessarily carry out program activities. The program uses a feeding program sponsor, typically a public or nonprofit organization like Feeding Our Future, to coordinate with sites that offer food services. The sponsoring agency keeps a small percentage of the reimbursement funds as an administrative fee in exchange for submitting claims, sponsoring the sites, and disbursing the funds.

According to FBI records, between 2018 and 2021, the number of reimbursements that Feeding Our Future received jumped significantly from $307,000 to $197.9 million. Court documents describe how two defendants used a small Minnesota restaurant to bill the government for approximately 125 million meals in 2021 through a series of shell companies connected to the central non-profit. The defendants provided lists of names for approximately 2,000 children, but only 33 could be matched to the names of actual students – the Department of Justice alleges that Defendants used online name-generating and number randomization software to create tables of falsified children’s names and ages. Meanwhile, the defendants allegedly used the proceeds to buy real estate in Minnesota, Kenya, and Tukey, as well as luxury cars and jewelry.

When the Minnesota Department of Education asked questions of the group in an attempt to provide oversight, they were provided with “false assurances” and faced a discrimination lawsuit from the program’s leadership.

According to federal authorities, this is the largest pandemic-related fraud scheme to date.

Resources:

Amy Forliti, “US: 48 Exploited Pandemic to Steal $250M from Food Program,” *U.S. News & World Report*, September 20, 2022.

Author: ASB

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

***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, Andy Ball

Posted by the California Department of Education, September 2022

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