

# **The Federal Update for November 5, 2021**

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

Re: Federal Update

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## Legislation and Guidance

### Congress Moves Closer to Agreement on Reconciliation Bill

Lawmakers continued negotiations this week on the reconciliation bill that will provide funding for “soft” infrastructure, like childcare and universal pre-kindergarten, following the release of a revised White House proposal last Thursday. The legislation is intended to be passed through the budget reconciliation process, which will not require Republican support in the Senate.

The new proposal significantly decreased the amount of funding for education initiatives compared to House legislation drafted earlier this year and reduces the total cost of the bill from $3.5 trillion to under $1.75 trillion. The revised proposal is intended to assuage concerns over the high cost held by some moderate Democrats in the Senate. The proposal was modified again on Wednesday, with House Democrats making only minor changes to the education provisions, including more funding for Community College and Industry Partnership Grants, for a total of $5 billion.

The current version of the legislation also includes $1.4 billion for career, technical, and adult education programs, an increase of the maximum Pell Grant award by $550, an expansion of Pell Grant eligibility, $500 million for colleges for retention and completion grants, $4.5 billion for certain Workforce Investment and Opportunity Act activities, $1 billion for apprenticeships, funding for universal pre-school, and others. In addition, the bill increases the Community Eligibility Provision multiplier to 2.5 from 1.6 and lowers the participation threshold from 40 percent to 25 percent. Also on the school nutrition front, the bill provides $30 million for school kitchen equipment grants and $250 million for competitive grants to schools for activities that support healthy food offerings and healthy lifestyles.

Even with the reduced cost of the new proposal, some moderate Democrats in the House and Senate are requesting more time to evaluate the bill and determine its economic impact, particularly following additional changes on Wednesday. While Speaker of the House Nancy Pelosi (D-CA) was initially pushing for a vote on the bill Thursday evening, the vote was pushed to Friday after moderate Democrats said they will not vote until a Congressional Budget Office score is provided – an analysis that could take weeks. Speaker Pelosi may not have enough support to take a vote today, which could lead to a weekend session for House lawmakers, as the House is scheduled to enter into recess next week. The House is also expected to take a vote on the bipartisan infrastructure bill following a vote on the reconciliation legislation.

Should the reconciliation bill pass the House in the coming days, Senate moderates have not confirmed whether they will support the legislation as is. House lawmakers have added back into the legislation a provision to provide paid family leave – a provision that Senate moderate Joe Manchin (D-WV) has expressly opposed. In addition, it remains unclear whether certain provisions in the House bill will pass muster under the strict budget reconciliation rules that will allow the bill to bypass the Senate filibuster, including immigration provisions.

Resources:

Heather Caygle and Sarah Ferris, “Pelosi revs House Dem engines after season in the ditch,” *Politico*, November 5, 2021.

Sarah Ferris, Heather Caygle, Nicholas Wu, “Pelosi aims to push domestic agenda double-whammy, despite centrist holdouts,” *Politico*, November 4, 2021.

Author: KSC

### ED Publishes Updated Reporting Form

The U.S. Department of Education (ED) has published a draft updated reporting form for funds under the Elementary and Secondary School Emergency Relief Fund. The reporting form is for State, local, and tribal governments and asks for information on amounts expended and remaining as well as plans for specific uses. For funds appropriated under the American Rescue Plan (ARP), the form asks for amounts spent toward required set-asides for learning loss mitigation, summer enrichment, and after school programs.

Additionally, ED plans to ask how the State identified students who have been most impacted by the pandemic, or how it asked districts to do so. State-level funds reporting is divided up into broad categories including physical health and safety, meeting students’ academic, social, emotional, and mental health needs, and operational continuity. Districts must report for specific activities under those same broad categories, including items such as “assistance with meals,” “temporary classroom space,” “high-dosage intensive tutoring,” “early childhood programs,” and information on connectivity. Reports would be due annually on spending during the previous federal fiscal year.

Comments are due by November 29 and can be filed via the [*Federal Register* notice on ESSER reporting here](https://www.federalregister.gov/documents/2021/10/29/2021-23640/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-for). The [draft reporting form is here.](https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202106-1810-006&icID=242779)

Author: JCM

## News

### State AGs Side with Students in Title IX Suit

A group of 19 State attorneys general has filed an amicus brief backing students in a lawsuit challenging a religious exemption to Title IX. The lawsuit seeks to overturn the 2020 rule promulgated under Title IX of the Education Amendments of 1972 which allows religious colleges to claim a religious exemption at any time, even after a complaint is brought against a school.

“In combination, the rules harm students, place them at higher risk of being victims of sex discrimination, and make it more difficult to hold schools accountable for the resulting harm,” the brief argues.

In the lawsuit against the U.S. Department of Education, about 30 current and former students at evangelical Christian colleges say the agency has failed to prohibit policies that discriminate against LGBT students. Some of the plaintiffs say their offers of admission were revoked or that they were expelled when school officials learned they were LGBT and others faced harassment or felt uncomfortable reporting sexual assault or harassment. The students themselves say that the religious exemption is unconstitutional because it allows schools who claim religious beliefs to ignore civil rights complaints.

Resources:  
Elizabeth Redden, “Dem AGs File Brief in Title IX Religious Exemption Suit,” *Inside Higher Education*, November 3, 2021.  
Author: JCM

### Lawmakers Demand Answers from Garland on School Threats Memo

Similar to a request made by Senators in an October 8 letter to U.S. Attorney General (AG) Merrick Garland, members of the House Committee on Oversight and Reform wrote to AG Garland asking him to explain the reason behind his October 4 memorandum on violence against school administrators. Led by Congressman James Comer (R-KY) and Congresswoman Nancy Mace (R-SC), the lawmakers take issue with the AG’s memo saying that they are concerned that it is a “pretext to silence parents” who speak out against how school districts educate their children in recent times. Among the issues these parents raised, which include the availability of in-person schooling and whether masks should be required, one stands out – whether critical race theory should be taught in schools. The letter argues that the National School Board Association (NSBA) and President Biden colluded to “stifle debate and silence parents” and that AG Garland was aware of their contact which prompted the AG’s October 4 memo. Specifically, the lawmakers allege that the White House communicated with NSBA before the association drafted its September 29 letter, which has since been retracted by the organization, requesting the President to use law enforcement to stop the spread of misinformation about critical race theory being taught in schools. The lawmakers say that this contact, the fact that the AG published his memo just five days after NSBA published its letter, and the “unnervingly” similar sentiment of both letters points towards collusion amongst the parties. Like the senators’ October 8 letter, the lawmakers also raise concern that the AG possibly has a conflict of interest in issuing the letter because his son is a co-founder of an education company that provides surveys to school districts on introducing critical race theory in schools.

The lawmakers request AG Garland to respond to a list of questions by November 17. They also ask the AG to provide all U.S. Department of Justice (DOJ) data he relied on in making the assertion that “there has been a disturbing spike in harassment…against school administrators” and all communications between DOJ and White House employees regarding the issuance of the memo. The letter is signed by 20 lawmakers.

[A copy of the letter can be viewed here.](https://republicans-oversight.house.gov/wp-content/uploads/2021/11/Letter-to-DOJ-re-School-Board-Memo-11-03-2021.pdf)

Author: ASB

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Contributors: Julia Martin, Kelly Christiansen, Andrew Ball

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