

**The Federal Update for November 11, 2022**

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Re: Federal Update

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##  News

### Congressional Balance Remains in Question After Election Day

Lawmakers return to session next week as the balance of the House and Senate for the 118th Congress remains uncertain following the midterm election on Tuesday. Minimal Congressional action is expected while election results are still pending. The balance of the Senate currently stands at 49 Republicans and 48 Democrats, with election results still pending in Arizona and Nevada, and a runoff election planned in Georgia. According to the *Associated Press*, Republicans have won 211 seats in the House so far, with Democrats holding 192. A party must reach 218 seats to win control of the House.

Depending on the final results of the Senate elections in Arizona and Nevada, the balance of the Senate may come down to the results of a runoff election in Georgia, similar to the 2020 Congressional election. In Georgia, if no candidate receives more than 50 percent of the vote, then the top two candidates progress to a runoff election. That election is scheduled for December 6th.

With the control of the House and Senate still undetermined, Congressional leadership for the 118th Congress remains unclear. Republicans are predicted to gain the majority in the House, though it may be a slim majority and several House races have not yet been called. Should Republicans win the House, current Minority Leader Kevin McCarthy (R-CA) plans to run for Speaker of the House, though there is speculation on whether additional members would challenge him. On the House Committee on Education and Labor, Virginia Foxx (R-NC) is expected to become chairperson again, although she will need a waiver of the committee chair term limits, and Bobby Scott (D-VA) will serve as Ranking Member.

On the Senate side, should Democrats maintain their current majority, Charles Schumer (D-NY) will continue serving as Majority Leader and Mitch McConnell (R-KY) as Minority Leader. Some Republican lawmakers are calling for a delay in leadership elections to determine if Senator Mitch McConnell should continue to lead their party in the Senate. Leadership on the Senate Committee on Health, Education, Labor, and Pensions (HELP) remains uncertain. Current Chairwoman Patty Murray (D-WA) is likely to move to the top role on the Senate Appropriations Committee. The next Democrat in line by seniority on the HELP Committee is Bernie Sanders (I-VT); however, depending on who takes leadership roles on other committees, Bob Casey (D-PA) or Tammy Baldwin (D-WI) could also be in line for the chair role on the HELP committee. Rand Paul (R-KY) or Bill Cassidy (R-LA) are likely to lead Republicans on the HELP Committee.

Regardless of the final results of the Senate election, neither party will have a supermajority, or 60 votes, in the Senate, significantly limiting the ability of either party to push through key policy priorities whether that party holds the majority in the House or not, as most legislation requires 60 votes of support to advance in the Senate.

Orientation for new members of the 118th Congress and Republican leadership elections are scheduled for next week. Democratic leadership elections will take place later this month. Any results from those leadership elections must be formally approved in January once the 118th Congress convenes.

Author: KSC

### Court Invalidates Student Debt Relief Plan

One week after Justice Amy Coney Barrett declined to grant an emergency appeal from Indiana borrowers challenging the administration’s student loan forgiveness plan, a federal judge in Texas has struck down the debt relief plan. The Thursday decision, out of Texas, marks the first successful challenge to the loan forgiveness plan. The decision called it an act of administrative overreach and suggested that Congress, not the administration, should be the one to cancel student debt.

The 8th Circuit Court of Appeals had temporarily blocked the administration from discharging student loans, but this week’s federal district court decision goes further, determining that the plan is “an unconstitutional exercise of Congress’s legislative power and must be vacated.” The district judge determined that the two plaintiffs in the Texas case have standing as they were denied the opportunity to comment on the debt relief plan – a right provided under the Administrative Procedures Act, according to the decision.

The Biden administration removed the online debt relief application on Friday in response to the district court decision and appealed the decision to 5th Circuit Court of Appeals. In the meantime, other cases on the debt relief plan will proceed, including the 8th Circuit case, in which the judge asked the U.S. Department of Education (ED) and the plaintiffs to amend their briefs. A decision in that case is expected soon. ED said that it has reviewed and approved more than 16 million applications and that a total of 26 million borrowers have submitted an application, but added this morning that it would stop accepting new applications following the Texas decision.

Resources:
Michael Stratford, “Education Department suspends application for student debt relief after court ruling,” *Politico*, November 11, 2022.

Michael Stratford, “Federal judge strikes down Biden’s student debt relief program,” *Politico*, November 10, 2022.

Michael Stratford, “Justice Barrett, again, rejects bid to block Biden’s student debt relief,” *Politico*, November 4, 2022.
Author: JCM

## Legislation and Guidance

### ED Updates Draft Title I Equitable Services Guidance

The U.S. Department of Education (ED) sent States a new updated draft on guidance for providing equitable services to students and teachers in private schools under Title I, Part A of the Elementary and Secondary Education Act. The updates to this guidance focus on the use of “representative sampling” to determine the population of eligible students for the purpose of allocating funding to private schools.

The new document updates several questions to outline what constitutes acceptable sampling for purposes of determining the proportionate share. It says that a district “should consider the degree to which respondents are similar to non-respondents, such as by using neighborhood or Title I public school attendance area characteristics.”

If a sample is determined not to be representative, the reasons should be shared with private schools as part of consultation. Because the data source to be used to determine the proportionate share for children in private school should be part of the initial consultation conducted by the district, the instruction to share changes in the district’s decision if the sample is not representative could prolong the consultation process and require additional contacts by the district. The updates to the guidance also emphasize that while a district must consider available sources of data if presented by a private school, the district will make the final decision about the measure of poverty that is used to determine the proportionate share.

Further, ED says that sample data may still be used if it is not a representative sample for the overall number of children but should be used in combination with another data source which provides information on other students. In this case, data collected from a survey could be used in combination with data from other sources outlined in the guidance, including free and reduced-price school meal data or E-Rate data.

ED’s guidance does not provide a suggested share of students whose data the district can take as a representative sample, but in its examples, it allows data for 300 out of 400 students to be used to extrapolate while in another example, where a survey covers 25 out of 100 students, the district may determine that the information provided is not representative of the population as a whole.

The updated draft, which is open for public comment until December 8th, is [available here](https://oese.ed.gov/files/2022/11/Title-I-equitable-services-guidance-revised-for-public-comment-11-9-2022.pdf).

Author: JCM

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