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# **The Federal Update for November 17, 2023**

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

Re: Federal Update

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*Due to the Thanksgiving holiday and The Bruman Group’s Fall Forum November 29-December 1, the next issue of the Federal Update will publish on December 8.*

## Legislation and Guidance

### Congress Passes CR, Averting Government Shutdown

Congress passed a second continuing resolution (CR) for fiscal year (FY) 2024 this week, averting a potential government shutdown on Friday night. The multi-pronged temporary measure extends funding for certain federal agencies to January 19, with the remaining agencies’ funding, including the U.S. Department of Education (ED), expiring on February 2.

The CR passed this week does not include President Biden’s request for supplemental appropriations for military and humanitarian aid for ongoing wars overseas or funding for additional security along the Mexico-U.S. border but received bipartisan support in both the House and Senate. House conservatives, however, did not support the bill due to a lack of spending cuts and aid for Israel.

The House had planned to move forward this week with Speaker of the House Mike Johnson’s (R-LA) agenda to consider all 12 appropriations bills by Friday, but divisions within the Republican Party on spending levels for some federal agencies caused the House to punt additional action until after returning from the Thanksgiving holiday recess. The House began consideration of the FY 2024 Labor-Health and Human Services (HHS)-Education funding bill early this week, voting on more than 100 amendments, but failing to take a final vote on the legislation due to a lack of support from both Democrats and some Republicans. The House bill proposes deeper cuts to education funding than was agreed to by the White House and lawmakers earlier this year as part of the debt ceiling deal.

The Senate Committee on Appropriations approved its own funding bill for education in July, tracking closely to the spending levels agreed to in the debt ceiling deal, and providing minor increases or flat funding for most formula education programs. Due to the significant differences in education funding levels between the House and Senate bills, FY 2024 appropriations negotiations will be challenging moving into early next year.

Author: KSC

## News

### ED Will Update Privacy Rules

Officials from the U.S. Department of Education (ED) said this week that they will issue new regulations on student privacy in the next year. In remarks at the American Enterprise Institute, ED officials said that they recognize a need to update regulations under the Family Educational Rights and Privacy Act (FERPA) given the broad availability of new artificial intelligence (AI) technology. They also expect action from Congress on student privacy.

ED also noted that they are working to implement a new executive order on AI from President Biden which directs federal agencies to set standards to ensure data privacy and security and prevent discrimination – but also to implement technologies in government offices that could improve efficiency and innovation. Technologies implemented in government agencies would have higher standards for transparency, safety, and ethics.

The [executive order is here](https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/).

Author: JCM

### OCR Releases First Post-Pandemic Civil Rights Data

This week, the U.S. Department of Education (ED) released data collected under the Civil Rights Data Collection (CRDC) for school year 2020-2021 – the first civil rights data released that captures the impact of the COVID-19 pandemic. All public schools are required to report certain data points biennially to the CRDC, but the data released this week is the first since the 2017-2018 data collection due to a pause during the COVID-19 pandemic.

The data highlights inequities in schools with access to science and mathematics courses, student discipline, harassment and bullying, and other issues. The data shows higher rates of discipline and referral to law enforcement for students with disabilities and black students when compared to their peers, with black male students receiving expulsions and out-of-school suspensions at almost twice the rate of white male students and similarly higher rates for black female students compared to white females. ED also found that almost 53,000 students were restrained or secluded in schools, with boys, black students, students of two or more races, and students receiving services under the Individuals with Disabilities Education Act being restrained and secluded at higher rates than their overall enrollments.

The CRDC data also revealed lower rates of access to and enrollment in advanced courses for minority students, including advanced placement courses and higher-level mathematics and science courses. Schools also reported lower access rates for students of color to certified teachers and school counselors, but overall, most high school students – 96 percent – had access to at least one school counselor.

A new required data component on the CRDC included access to internet and devices at school, which showed varied rates from State to State with Florida and Alaska having the lowest rates of access to internet. Most schools – 87 percent – reported allowing students to take school-issued devices home with them.

[The full results from the 2020-2021 CRDC are available here](https://civilrightsdata.ed.gov/?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

Resources:

Bianca Quilantan, “Education Department releases civil rights data highlighting lingering inequities,” *Politico*, November 15, 2023.

U.S. Department of Education Press Release, “U.S. Education Department’s Office for Civil Rights Releases New Civil Rights Data on Students’ Access to Educational Opportunities During the Pandemic,” November 15, 2023.

Author: KSC

## Reports

### GAO Report Finds Difficulties in Implementing Stimulus Programs

A report from the U.S. Government Accountability Office (GAO) reviewing the implementation of COVID-19 relief funds found that States experienced a number of challenges in implementing those programs. Primary issues included State capacity challenges and a changing landscape, but State staff at all levels also pointed to delayed or changing guidance for allowable uses of funds, slow responses or lack of response from federal agencies to questions, and burdensome reporting requirements.

Investigators reviewed programs administered through the U.S. Departments of Education, Health and Human Services, Homeland Security, Transportation, and Treasury that handled $10 billion or more in relief. They spoke with agency officials as well as State Governors’ and agency staff in California, Florida, Illinois, Minnesota, New York, Pennsylvania, Texas, and Washington. Many of those States already had some structures in place – for example, natural disaster response staff, existing reimbursement processes, and systems to monitor fraud and improper payments – that they were able to use for relief dollars.

Among the challenges noted by States was the timing of programs and guidance – which often came out of sync with State legislative sessions needed to implement programs. State staff also highlighted what they called “moving goal posts” for various streams of funding – including agency guidance which came several months into the implementation of programs. States also said that the timing of reporting deadlines often coincide with related federal and State reporting deadlines, straining staff capacity when they were required to collect and aggregate a large amount of new data. Some States even noted that they had to develop new State systems or portals for data collection.

The GAO report concludes with best practices for any future federal relief dollars, including helping States to leverage preexisting programs and processes, and establishing new units and processes specifically to provide technical assistance on relief funds.

The [full GAO report is available here](https://www.gao.gov/assets/d24106152.pdf).

Author: JCM

### ED OIG Releases Report on Management Challenges

This month, the U.S. Department of Education’s Office of Inspector General (ED OIG) released its annual report on major management challenges that ED is facing. The report includes a review of how ED is responding to challenges and presents further actions that ED could take to make their processes more effective.

ED OIG identified seven major challenges: (1) implementing pandemic relief laws for elementary and secondary education, (2) implementing pandemic relief laws for higher education, (3) oversight and monitoring of student financial assistance programs, (4) oversight and monitoring of grantees, (5) data quality and reporting, (6) improper payments, and (7) information technology security.  Many of these challenges were also included in last year’s report. OIG said that ED had made progress on addressing these, but vulnerabilities were still found.

To assess these challenges, ED OIG implemented a new framework which rates each challenge area on a scale of one to five. A rating of one on the scale indicates that ED is just beginning progress on the challenge and a five indicates ED has demonstrated progress in addressing the challenge.

The OIG report indicated that ED was at a level five in addressing the challenge of implementing pandemic relief laws for elementary and secondary education. ED has developed plans and activities that have addressed the large amount of funding for these programs, including providing improved technical assistance and enhanced monitoring, the report found. Despite the improvement, OIG cautioned that ED needed to continue implementation of these plans in order to oversee the large amount of funding.

While ED has made demonstrated progress in implementing pandemic relief laws for elementary and secondary education, OIG did not find the same progress with the laws for higher education. OIG rated ED’s progress as a three, indicating the Department had only established progress on addressing the challenge. Although ED had made efforts to monitor programs, OIG found that the Department needed to follow through on its current plans and effectively implement additional requirements for financial assistance programs and report quality data.

The report also found that ED had reached a level three in oversight and monitoring of student financial assistance programs, oversight and monitoring of grantees, and in improper payments. In responding to each of these challenges, ED has made plans, but has not provided information on the outcome of the plans.

ED OIG also rated the Department at a four, indicating significant progress, for information technology security and data quality and reporting. The report noted that ED had made progress in implementing activities that mitigated these challenges.

[The full report can be found here.](https://oig.ed.gov/sites/default/files/reports/2023-11/Final-Report-FY-2024-Management-Challenges-Facing-U-S-Department-Education-508-Compliant.pdf)

Author: BNT

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