

# The Federal Update for November 18, 2022

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Re: Federal Update

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*The Federal Update will not be published for the next two week due to the Thanksgiving holiday and Brustein & Manasevit’s annual Fall Forum. The Update will resume publication on Friday, December 9th.*

## Legislation and Guidance

### Federal Funding Set to Expire in Mid-December

The current short-term spending measure keeping the federal government funded will expire on December 16th absent additional action from lawmakers. Lawmakers are turning back to regular business following a hectic two weeks involving the midterm elections and leadership races in Congress.

The top appropriators in the Senate, Patrick Leahy (D-VT) and Richard Shelby (R-AL), are reportedly close to agreement on top-line spending levels for defense and non-defense programs for fiscal year (FY) 2023. Those top line levels must be determined before funding for each federal agency and programs within those agencies can be decided. Senate appropriators must also work with members of the House Appropriations Committee in reaching an agreement that will pass muster in both chambers. With the Thanksgiving holiday next week, lawmakers have only a few days left in session before the December 16th deadline.

A second short-term measure, or continuing resolution (CR), is possible, should the mid-December deadline prove to be unreachable. A second CR could push the deadline by a few days or even punt the funding decisions to start of the 118th Congress in the new year.

Secondary to FY 2023 appropriations is another funding issue that Democrats in leadership are seeking to address before the end of the year – the debt limit. The United States is expected to breach the debt limit in the fall of 2023, but some Democrats are pushing to take action to increase the limit now before losing the House majority in 2023. It remains unclear if there is a path to increasing the limit this year, however, as tying the measure to an FY 2023 appropriations measure would fail without enough Republican support in the Senate. The second option of using a reconciliation measure, which only requires a simple 50-vote majority in the Senate, instead of the 60 votes needed for an appropriations bill, is a lengthy process that some Democrats are not keen to take on in the remaining weeks of the Congressional session.

Author: KSC

### ED Releases School Safety Fund FAQs

On Thursday, the U.S. Department of Education (ED) released guidance on the new money for schools passed into law by the Bipartisan Safer Communities Act in June, known as the “Stronger Connections” grant. Under the law, a one-time, $1 billion grant will be allocated to States by formula, through Title IV, Part A of the Elementary and Secondary Education Act. States must then create a competitive grant program to allocate the funds to high-need school districts. High-need districts can be defined as those with:

* A need for additional mental health staff;
* High rates of chronic absenteeism, exclusionary discipline, referrals to the juvenile justice system, bullying/harassment, community and school violence, students experiencing homelessness, students in foster care, or substance use; or
* Where students recently experienced a natural or manmade disaster or a traumatic event.

ED further encourages States to use a measure that prioritizes local educational agencies (LEAs) with high numbers or percentages of students living in poverty, and to incorporate stakeholder input in the design process.

According to the guidance, States can design their competitions in ways that prioritize certain LEA activities or categories of activities. ED seems to indicate through its guidance that this is expected to be a single grant program, despite funds being available over a period of three years.

States may reserve up to five percent of their grant for statewide professional development activities, for which ED provides a list of suggested options. While district-level funds must be used for purposes aligned with the “safe and healthy students” activities in Title IV, Part A, ED also notes that funds can be used to support safety and violence prevention, anti-bullying plans, implementing multi-tiered systems of support, and developing revised disciplinary policies, among other topic areas. Specific allowable activities for each are listed in the guidance. ED also notes that funds may be used to support school-based police officers or other law enforcement, but suggests comprehensive vetting and training practices.

The guidance lists prohibited uses of funds, including the purchase of “dangerous weapons” (defined as a “weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than 2 1/2 inches in length” and explicitly including firearms) and school construction.

ED also states that all funds under the Stronger Connections grant are subject to the same restrictions as regular Title IV, Part A funds, including the supplement, not supplant requirement, the maintenance of effort requirement, and the requirement to provide equitable services to private school students and teachers. Activities must be “evidence-based,” as defined in ESEA. Funds will be available for obligation through September 2026.

The [FAQs document is available here](https://oese.ed.gov/files/2022/11/BSCA_Stonger_Connections_FAQs_11-2022-FINAL.pdf).

Author: JCM

### Cardona Urges States to Use Pandemic Funding for Career Pathways

Secretary of Education Miguel Cardona released a “Dear Colleague” letter Monday that urges States and local educational agencies (SEAs and LEAs) to use American Rescue Plan Act (ARP) and Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) “to develop and expand pathways to student success after high school.”

Specifically, the letter encourages grantees to use funds to expand dual enrollment, strengthen career and college advising, increase work-based learning opportunities, and ensure all students have opportunities to earn industry-sought credentials.  ED says that funds under the Elementary and Secondary School Emergency Relief Fund (ESSER), the Governor’s Emergency Education Relief Fund (GEER), and institutional funds under the Higher Education Emergency Relief Fund (HEERF) can be used for these purposes.  The letter also provides examples of States and districts who are using funds for activities within each of the categories outlined by ED.

Notably, the letter includes a legal disclaimer stating that the contents of the letter do not have the force and effect of law and it is “intended only to provide clarity regarding existing requirements under the law or agency policies.”

[The Dear Colleague letter is available here](https://s3.amazonaws.com/PCRN/docs/ARP_Pathways_Dear_Colleague_11-14-22.508dh.pdf).

Author: KSC

## News

### 118th Congress’ Balance and Leadership Takes Shape

More than a week after the midterm elections, the party balance in both the House and Senate have been determined. Democrats will retain their majority in the Senate after successful races in Arizona and Nevada, and final results counted on Wednesday revealed that Republicans will take over as the majority party in the House. While some races are still pending and the final tally of Republicans in the House remains unknown, the party did secure the 218 seats necessary to hold the majority.

Both parties took steps this week to determine who would lead their caucuses in the 118th Congress. Following a party vote on Wednesday, Senator Mitch McConnell (R-KY) prevailed as Senate Minority Leader, which will be his ninth term in the position. McConnell received a last-minute challenge from Senator Rick Scott (R-FL), who criticized McConnell’s leadership style and the party’s agenda. Scott received 10 votes, making it the most competitive challenge that McConnell has received since he first became the GOP leader in 2007. Supporters of Scott included Senators Josh Hawley (R-MO), Ted Cruz (R-TX), Mike Braun (R-IN), Ron Johnson (R-WI), and Lindsey Graham (R-SC).

On the other side of the Capitol, House Republicans voted to nominate Kevin McCarthy (R-CA) as their choice for Speaker of the House – his first hurdle to taking on the top leadership position. However, the full House – both Democrats and Republicans – must still take a final vote on the Speaker after the 118th Congress convenes in January. Thirty-one Republicans voted against McCarthy’s bid this week, leaving open the possibility that he will be unable to garner the required 218 votes to officially take on the role next year. With a slim majority expected in the House, McCarthy needs support from almost every Republican member.

Meanwhile, Democrats are looking to fill key leadership positions with fresh faces. While Democratic leadership elections will not take place until later this month, Senator Chuck Schumer (D-NY) is expected to remain in his position as Senate Majority Leader. Meanwhile, Speaker of the House Nancy Pelosi (D-CA) announced Thursday that she will step aside as leader of the House Democrats next Congress, with Representative Hakeem Jeffries (D-NY) announcing his intent to seek election as House Minority Leader. Jeffries would be the first Black lawmaker to be the head of a party in Congress.

At the Committee level, Senator Patty Murray (D-WA), current chair of the Senate Committee on Health, Education, Labor and Pensions (HELP), will pursue the chair position on the Senate Appropriations Committee. If Murray is successful and serves alongside Senator Susan Collins (R-ME) as ranking member, this will be the first time that Appropriations committees in both chambers are headed by all women. Senator Bernie Sanders (I-VT) has said he will seek to take the gavel as chair of the Senate Budget Committee to chair the HELP Committee. On the Republican side for the HELP Committee, next in line by seniority as Ranking Member following Richard Burr’s (R-NC) retirement is Senator Rand Paul (R-KY), who announced this week that he would not seek the top Republican role on the HELP Committee. Senator Bill Cassidy (R-LA) is next in seniority following Paul.

Senator Murray will also step down from her role as Assistant Democratic Leader. Schumer announced his intention to nominate Murray for Senate President Pro Tempore. If elected, Murray would be the first woman to serve in the position and she would be third in the presidential line of succession.

Resources:

Burgess Everett, “‘Nothing to Negotiate’: McConnell Crushes Scott’s Right-flank Rebellion,” *Politico*, November 17, 2022.

Eleanor Mueller, “Murray to Seek Appropriations Gavel,” *Politico*, November 16, 2022.

Author: BNT

### Court Blocks Student Loan Forgiveness, ED Appeals

A federal appeals court issued a ruling Monday blocking the administration’s student loan forgiveness program. The appeals panel said that the temporary injunction against the program would apply nationwide and would “remain in effect until further order of this court or the Supreme Court of the United States.” That order suggests that the loan forgiveness represents overreach by the administration on an issue that would be more properly decided in Congress.

The case in the 8th Circuit was brought by Missouri on behalf of a quasi-governmental agency which acts as a student loan servicer – the Missouri Higher Education Loan Authority, known as MOHELA. MOHELA owns some federally-guaranteed loans and services other federally-held loans, and the State claimed that it would lose out on revenue should the program proceed. A lower court had dismissed the case, saying that the State did not have the authority to bring a suit on behalf of MOHELA, which had in fact publicly distanced itself from the lawsuit.

The administration had already paused the loan forgiveness program after a separate but similar ruling by a federal judge in the Northern District of Texas last week. But after this new ruling, the administration said that it would no longer accept applications for forgiveness because of the program’s uncertain future. Meanwhile, the Department of Justice has asked the Texas judge to put on hold his ruling that paused the program, citing “significant” harm to borrowers and requested a ruling on its appeal of that case to the 5th Circuit by December 1st.

In addition, the administration sent an emergency request to the U.S. Supreme Court Friday afternoon asking it to reverse the 8th Circuit decision and overturn the injunction put in place by that court.  The filing argued that the loan forgiveness plan “falls squarely within the plain text of the Secretary’s statutory authority.”  It suggests that the injunction would “leave[s] millions of economically vulnerable borrowers in limbo, uncertain about the size of their debt and unable to make financial decisions with an accurate understanding of their future repayment obligations.”

In the interim, the White House is reportedly considering extending the temporary loan forbearance that was set to expire in December while the cases are resolved.

Author: JCM

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