

# The Federal Update for December 16, 2022

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

Re: Federal Update

Date: December 16, 2022

[Legislation and Guidance 1](#_Toc122085529)

[Congress Passes One-Week Funding Stopgap 1](#_Toc122085530)

[Senate Narrowly Rejects Resolution to Overturn Charter Rules 2](#_Toc122085531)

[News 3](#_Toc122085532)

[OIG Releases Annual Work Plan and Management Challenges Report 3](#_Toc122085533)

[Reports 4](#_Toc122085534)

[GAO Says Colleges Aren’t Transparent on Costs 4](#_Toc122085535)

[Online Education Apps Lack Safety Tools, Group Says 4](#_Toc122085536)

*Due to the upcoming holidays, the next issue of the Federal Update will publish on January 6, 2023.*

## Legislation and Guidance

### Congress Passes One-Week Funding Stopgap

Congress passed a second continuing resolution (CR) for fiscal year 2023 this week that will extend federal funding for one more week, until December 23rd, while lawmakers work toward negotiating a final spending package.

Earlier this week, Congressional leaders struck a deal on the overall framework for a final appropriations package but few details have been released. Finalizing legislation based on the framework by the end of next week will be a challenge, and Senate Minority Leader Mitch McConnell (R-KY) has said that Republican senators will be leaving Washington on December 23rd, regardless of whether funding legislation has been voted on yet. Further adding to the challenge of passing a funding bill will be the several policy provisions expected to be attached to the legislation, increasing the chance of losing support from some lawmakers. Senate Majority Leader Chuck Schumer (D-NY) has told lawmakers to expect votes on the measure Thursday and Friday. But some Republican lawmakers are pushing for a CR that would extend into early 2023, given that Republicans will take over as majority party in the House when the 118th Congress convenes in January.

The framework agreed to this week would provide $1.7 trillion in funding across federal agencies – an increase in overall funding from the previous fiscal year. However, program-specific funding levels have not yet been made public.

Resources:

Caitlin Emma and Marianne Levine, “Senate races to avert government shutdown,” *Politico*, December 15, 2022.

Author: KSC

### Senate Narrowly Rejects Resolution to Overturn Charter Rules

On Wednesday the Senate narrowly voted down a resolution that would overturn the charter school grant rule promulgated by the U.S. Department of Education this summer. The controversial regulations, published in July, were a more moderate version of proposed rules that would restrict the kinds of charter schools that are able to receive federal funds under the Charter School Grant Program and require that charter schools demonstrate there is a need or demand for the school in their area to be eligible. Charter advocates pushed back hard, saying that the rule would restrict student choice. The administration pointed to the fact that the rule would only apply to the Charter School Grant Program and would not restrict charters’ eligibility for other federal funds and said the rule “strengthens fiscal transparency” and “strives to prevent further school segregation.”

The resolution was brought pursuant to the Congressional Review Act, which allows both chambers of Congress – if the President signs off – to strike a recent regulation from the federal books and prohibit the agency from ever publishing a “substantially similar” rule. It is unlikely this resolution would have passed the House, and President Biden would not have signed it. However, it is clear that charter school funding is going to be a flash point for lawmakers in the coming months. Lawmakers may also seek to exercise the powers under the Congressional Review Act more frequently.

The charter school rule may still see more challenges. It faces a federal lawsuit from a Michigan charter school organization and an Ohio charter authorizer which state that proper administration procedures were not followed in publishing the rule.

Resources:
Michael Stratford, “Senate rejects GOP bid to overturn Cardona’s charter school rules,” *Politico*, December 14, 2022.
Author: JCM

## News

### OIG Releases Annual Work Plan and Management Challenges Report

This month, the U.S. Department of Education Office of Inspector General (ED OIG) released two annual reports, the fiscal year (FY) 2023 Annual Plan and the FY 2023 Management Challenges report.

In the FY 2023 Annual Plan, ED OIG outlines priorities for audits and investigations, and the strategy to address challenges in the new year. ED OIG plans to dedicate most of its time and resources to pandemic relief and disaster recover funding. Over the last three years, ED has received over $280 billion in funding through the Coronavirus Aid, Relief, and Economic Security Act, the Coronavirus Response and Relief Supplemental Appropriations Act, and the American Rescue Plan Act. In response to the increase in funding, ED OIG plans to carry out a series of audits and reviews of the use of pandemic relief funds and ED’s effectiveness in oversight of those funds. The office is also dedicating resources to preventing and investigating fraud related to funding for disaster recovery.

Amid ED’s current student financial aid battle, ED OIG plans to monitor the status of debt relief and Federal Student Aid (FSA), including whether ED’s loan discharge process is effective and efficient. The office will also investigate whether FSA properly implemented the Student Aid and Borrower Eligibility Reform initiative. In the management of K-12 and special education grant programs, ED OIG plans to audit selected State educational agencies (SEAs) and determine whether they provided adequate oversight of Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk, as authorized by Title I, Part D the Elementary and Secondary Education Act. In its review, ED OIG plans to assess the effectiveness of the programs in improving the skills of participating children.

The second report, FY 2023 Management Challenges Facing the U.S. Department of Education, identifies ED’s management challenges, the progress made in addressing those challenges, and any further actions that could increase ED’s overall effectiveness. The report includes five main management challenges: (1) implementing pandemic relief laws, (2) oversight and monitoring, (3) data quality and reporting, (4) improper payments, and (5) information technology security.

The increase in pandemic relief funding led to more than 100 grant and loan programs, and increased ED’s loan portfolio to over $1.6 trillion. In response to this challenge, ED OIG determines that the Department needs to regularly refine oversight activities, work on receiving timely and accurate information, and respond quickly to challenges that it identifies. The report also determines that ED must increase oversight and monitoring, especially in audits related to student financial aid assistance programs.

Additionally, the report finds that ED lacks effective controls to ensure that reported data are accurate and complete, which impacts the ability to evaluate program performance and make management decisions. In response, ED OIG recommends that the Department regularly assess whether its data quality initiatives are meeting established goals. Further, the report notes that ED must ensure funds reach the intended recipients and reduce the number of improper payments. The Pell Grant and the William D. Ford Federal Direct Loan programs were found to be most susceptible to improper payments. Finally, the ED OIG report lays out the Department’s struggle with information technology security and suggests the Department remain committed to emerging information security strategies and solutions.

The FY 2023 Annual Plan can be [viewed here](https://www2.ed.gov/about/offices/list/oig/misc/oigannualplan20.pdf) and the FY 2023 Management Challenges Facing the U.S. Department of Education report can be [viewed here](https://www2.ed.gov/about/offices/list/oig/misc/managementchallenges2023.pdf).

Author: BNT

## Reports

### GAO Says Colleges Aren’t Transparent on Costs

In a report issued this month, the Government Accountability Office (GAO) says most colleges fail to tell students how much a year of school will cost.

GAO used a representative sample of 176 colleges, which it declines to name in the report, and measured their award letters against 10 best practices for cost transparency. Those best practices include estimating net price by deducting grants and scholarships from all key costs, itemizing direct and indirect costs, including parent PLUS loans separately from other aid, and separating out gift aid, loans, and work-study. GAO found that nearly two thirds of colleges follow half of those best practices or less, and no college followed all 10.

According to the report, half of colleges understate the net price, excluding “key costs” and factoring in loans, making the college appear less expensive. Forty-one percent of the schools examined by GAO did not include a net price in their offers at all. Further, only 45 percent of the sample itemize costs, and 29 percent don’t itemize anything (the remainder itemize “some but not all” costs).

GAO recommends legislation which would require financial aid offers to provide specific information to all students on college costs much in the way recent changes to law require itemization for veterans, service members, and their families.

The [full report from GAO is available here](https://www.gao.gov/assets/gao-23-104708.pdf).

Author: JCM

### Online Education Apps Lack Safety Tools, Group Says

A report from the research group Internet Safety Labs K-12 says that 96 percent of apps schools require or recommend are not safe for children. The group points to the information that apps collect and sell to third parties for advertising purposes.

Researchers looked at a sample of schools in each State and found that the 663 schools they reviewed used a total of 1,722 apps for classroom communication, online learning, and other purposes. The group labelled 78 percent of apps “do not use” because of portions of code that allowed for shared information with a data broker or companies that profit from online advertising and sales like Amazon, Facebook, and Twitter. More than two-thirds of apps that collected personal data sent that data to Google, which is a major advertising platform. Another 18 percent of apps were considered “high risk.” Many of the apps used were non-education specific, including sites like the New York Times, YouTube, or Spotify, which provide few or no protections for children.

The group found that 79 percent of apps reviewed access location data, and 52 percent access calendar and contacts information.

Additionally, the report found that custom-made apps were generally not better than ready-made commercial apps because of the amount of data and information they address and how much they send to key data aggregators or brokers.

The report recommends that schools “have much more robust IT, cybersecurity and overall technology support capabilities in order to keep students safe while using technology,” especially given the number of districts that provide personal devices to students.

The [full report is available here](https://internetsafetylabs.org/wp-content/uploads/2022/12/2022-k12-edtech-safety-benchmark-national-findings-part-1.pdf).

Author: JCM

*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, Brandi Tennant

Posted by the California Department of Education, December 2022

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