

# The Federal Update for December 17, 2021

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Re: Federal Update

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*Due to the upcoming Christmas and New Year’s holidays, the next issue of the Federal Update will publish on January 7, 2022.*

## Legislation and Guidance

### Vote on Reconciliation Bill Punted to Next Year

Senate Democrats continued negotiations this week on the $1.7 trillion social spending plan passed by the House last month but were unable to come to an agreement that would allow for a vote this year. The bill is being considered under the budget reconciliation process, which has strict limitations on what provisions can be included in the legislation, but only requires a simple majority in the Senate to pass, allowing Democrats to pass the bill without Republican support.

Key swing votes in the Senate, in particular Senator Joe Manchin (D-WV), have yet to give full support for the reconciliation bill, and Democrats are unable to pass the legislation without support from all 50 Democrats in the Senate and Vice President Kamala Harris’ tie-breaking vote. The President hosted discussions with Senator Manchin this week but Manchin has not said that he will vote yes on the legislation in its current form, expressing concerns over an expanded child tax credit and other provisions. In addition, the non-partisan Senate parliamentarian is still reviewing the legislation to ensure it passes muster with the strict requirements attached to using the reconciliation process – an analysis that must be completed before the bill can be brought to the floor for a vote. The parliamentarian ruled Thursday that provisions included in the legislation related to immigration reform do not comply with the reconciliation rules, adding another hurdle to passing the bill.

Given Senator Machin’s continued hesitation in supporting the bill and the Senate parliamentarian ruling Thursday, Senate Democrats and President Biden have acknowledged that the Senate will be unable to pass the bill before the end of the year. The White House is expected to continue discussions with Senator Manchin in the coming weeks with Senate Democrats pushing for a vote on the bill in the New Year.

Resources:

Burgess Everett and Marianne Levine, “Schumer Faces Restive Dems as Agenda Hits Brick Wall,” *Politico*, December 16, 2021.

Author: KSC

### Congress Passes Legislation to Raise Debt Ceiling

The House and Senate have now both cleared legislation that will increase the debt ceiling – the statutory limit on how much money the country can borrow to pay its obligations – by $2.5 trillion. This measure will avoid a default on existing debts, which was expected to arrive as early as this week without Congressional action. The debt ceiling has been one of several thorny fiscal issues being discussed on Capitol Hill this month, and this measure will let them push that discussion off until some time in 2023.

Lawmakers allowed a one-time exception to the filibuster for passage of this resolution in the Senate, allowing the measure to pass with 50 votes instead of the 60 normally needed to clear all procedural hurdles.

This debt ceiling measure is separate from the discussion of how much money to appropriate for various federal programs. Earlier this month, Congress passed a “continuing resolution” which will keep programs operating at current levels through mid-February. Debate on program-level funding will resume in the New Year.

Author: JCM

### DOL Releases Guidance on Submitting State Plan Modifications

The U.S. Department of Labor (DOL) released a training and employment guidance letter (TEGL) this week outlining the steps for States to submit required modifications to their Workforce Innovation and Opportunity Act (WIOA) plans. WIOA requires States to submit an update to their four-year State plan every two years. States are currently operating under approved State plans for program years (PYs) 2020-2023, with an update due this year covering activities and strategies for PYs 2022 and 2023.

Updates that States should be reviewing their plan for, according to DOL, could include changes such as “the reorganization of [S]tate administering agencies of WIOA programs, redesignation of local areas or establishment of new planning regions, changes to sub-[S]tate funding allocations, and other significant strategic or operational changes.” DOL also directs States to make data-driven decisions in updating their State plans, accounting for changes to the labor market resulting from the COVID-19 pandemic. Other areas that DOL asks States to review for potential updates in their State plans include the functionality of their systems across the WIOA one-stop programs, equity in service delivery and educational programming, and whether to enhance supportive service offerings, such as providing assistance with transportation access. Further, the DOL guidance reminds States of their stakeholder input obligations for both the overall four-year State plan but also the two-year update.

States should submit their State plan updates through the WIOA submission portal by March 15, 2022. ~~The TEGL on State plan updates is available here~~ [broken link removed].

Author: KSC

### ED Suggests Use of Stimulus Funds for Staffing Shortages

In a “dear colleague” letter to State and district education administrators this week, Secretary of Education Miguel Cardona laid out a number of ways schools and districts can use funds under the Elementary and Secondary School Education Relief Fund (ESSER) to address teacher and staff shortages.

In the letter, the U.S. Department of Education (ED) says that ESSER funds can be used to increase teacher and staff compensation, including through retention bonuses, permanent salary increases, or premium pay. ED also suggests using stimulus dollars to bring recently retired educators back to work for short periods of time, creating “permanent substitute” positions assigned to schools to ensure availability or offering license bonuses to increase the pool of substitute teachers, and increasing teachers’ mental health through reduced workloads, peer-to-peer support, flexible scheduling, and paid time off. Additional supports to ensure stability in the “educator pipeline” could include loan forgiveness, grants, or scholarships, teacher residency programs, and professional development.

The letter provides examples from a number of States who have implemented these or similar supports and expresses concern that losing teachers and other support staff could negatively impact students, especially those who are already most at risk. However, many schools and districts have argued that they have not been able to attract and retain adequate numbers of staff, even with many of these supports in place.

A [copy of the dear colleague letter on educator supports is available here](https://oese.ed.gov/files/2021/12/21-0414.DCL_Labor-Shortages.pdf).

Author: JCM

## Reports

### OIG Issues Report on Management Challenges

The U.S. Department of Education’s (ED’s) Office of Inspector General (OIG) has issued a report identifying what it anticipates to be the biggest challenges for the agency in administering federal programs in the coming year. In reviewing audits, inspections, and investigative work and previous accomplishments, OIG indicated that it believes there will be five major challenges in the year ahead: implementing stimulus legislation and related programs; oversight and monitoring; data quality and reporting; improper payments; and information technology security.

The report notes that stimulus programs come on top of existing ongoing program administration and monitoring and pose a significant challenge to agency staff. In order to respond to this challenge, ED OIG will focus on a risk-based approach to monitoring and offering technical assistance. OIG suggested that monitoring, in particular, was a concern with respect to higher education student financial assistance programs, largely because of the amount of funds involved. OIG urges ED to focus its enforcement efforts on monitoring pass-through entities and ensuring those entities conduct appropriate oversight.

In the area of improper payments, OIG expressed some concern that ED does not have adequate quality controls. “[T]he Department needs to properly implement its enhanced quality control procedures over its improper payment estimation process,” OIG writes. “The OIG will review the accuracy and validity of these measurements as part of the [fiscal year] 2021 [Payment Integrity Information Act] audit.”

Finally, OIG highlighted a number of areas in which ED’s systems and information are vulnerable to cyberattacks like those which have impacted large school districts in recent years. OIG notes that it has “consistently reported concerns” with ED’s information security controls, and suggests further work to address a number of deficiencies.

The full [OIG report is available here](https://www.oversight.gov/sites/default/files/oig-reports/ED/ED-OIG-Management-Challenges-2022.pdf).

Author: JCM

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