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MEMORANDUM

TO: **Interested Parties**
FROM: **Penn Hill Group**
DATE: **November 9, 2020**
SUBJECT: **2020 Election and Federal Education Policy**

What an election! As the voting process comes to an end, all of us – regardless of party – can celebrate that the end of this process is finally in sight.

With vote counting coming to an end, it's time for Penn Hill Group to once again take a steely-eyed glare into our special crystal ball and provide our best guess at what to expect on Federal education policy for the coming two years.

This memo includes a broad look at the election and an analysis of how the results will affect education policy in the lame-duck session and the upcoming 117th Congress. It includes our patented (not really, but maybe we should) 4P's analysis (politics, process, people and policy) of the Federal education policy landscape, along with our thumbs up/down look at key education issues facing the next Congress and President. We also incorporate supplemental links providing more information on the policy and procedural issues raised throughout this document; an overview of the current status of pending appropriations and major education and job training reauthorizations; and key regulations issued by the Trump Administration. And, lastly, we provide our best guesses, (which certainly can't be any further off than all the pollsters and pundits this past election!) at some of the anticipated changes in Administration leadership, House and Senate leadership and committee rosters and leadership.

Politics: Sweep out the old, bring in the new (well, not that new in some cases...)

The Administration: First, the results: 279 to 214, with four States outstanding, based on what we know so far. At this writing, Democrats are clearly pleased, and not just a little relieved, with the prospect of President Biden and Vice President Harris taking office in just 72 days. When the celebrations recede, the task of keeping the party together with such pent-up demand for action will fall to one of Washington's most trusted and experienced hands. His job will not be easy.

Congress: The latest election tallies are below, with a number of outstanding races yet to be determined. Preliminary results seem pretty clear, however: House Democrats surprisingly suffered the loss of some five seats, which seems likely to lead to a significant amount of finger-pointing in their ranks. House Republicans, on the other hand, are very pleased with their performance and will enter the next Congress just a few seats away from gaining the majority. In a result that is so 2020, it looks like we have to wait until the next year, January 5, 2021 to be precise, to determine which party will control the Senate, with not one, but two, runoff elections for the two Senate seats in Georgia. That said, it seems to us that the odds favor, but not overwhelmingly, Republicans retaining their majority by a hair. The best case scenario for the

Democrats is that the Senate will be split 50-50, with Vice President Harris serving as the tie breaking vote. Either scenario, however, will give Senate Republicans a great deal of influence that could potentially make or break a great deal of the Biden Administration's key policy initiatives and appointments to top jobs and judges. Senate Democrats will be dreaming of what might have been (and what was supposed to be), while beginning to grapple with the daunting task of passing the agenda of the new President of their own party potentially without the ability to control their own legislative body.

Election Results:

<u>House</u>		<u>Senate</u>		
Republicans	Democrats	Republicans	Democrats	Independents
196	216	48	46	2
<i>*23 House Races Undecided</i>		<i>*4 Senate Races Undecided</i>		

In the House, Democrats maintained their majority (at a reduced level) with 216 seats (a net loss of five) and 23 House races still too close to call.

In the Senate, the Republicans maintained their majority, currently at 48 seats, which could expand once the remaining four Senate races are decided. The two independent Senators, Bernie Sanders (I-VT) and Angus King (I-ME), are expected to continue to caucus with the Democrats, bringing the Democrats' current total to 48.

The good, the bad, and the big questions for each party

This election was a mixed bag of results for both parties, and each will have to face some very big questions as leaders attempt to chart a course for the next two years of a Biden/Harris Administration, a closely divided Senate and a House with fewer votes to spare on every controversial vote.

In the old days, large-scale partisan battles seemed to recede for several months after a campaign and a new President and Congress would get down to the task of policy-making in at least a somewhat bipartisan manner. Sadly, this is no longer the case. We expect the friction between the parties that marked the last several years to continue right up through the beginning and end of the next Congress, though perhaps at a somewhat lower decibel level when President Trump leaves the scene. The political challenges for both parties will begin from day one of the Biden Administration.

With friends like these...

Politics infuses every aspect of policy-making in Washington, and today this is truer than ever. There will be endless stories about the politics of Republicans versus Democrats, progressives



versus moderates versus conservatives, House versus Senate, speculation about who is up and who is down, and on and on. We know that Republicans and Democrats will keep battling each other; that seems to be a given and we'll leave the speculation on all the "political horse race" issues to the pundits for now.

Instead, perhaps the most interesting politics for us will not be between the political parties, but *within* them. That is because, with such a wide-ranging agenda proposed by the incoming President, a diminished House majority itching to press for far-ranging policy change, and a GOP House and Senate that remain deeply conservative, the jousting within parties to prioritize certain policies over others will have just as much, if not more, of an impact on whether or not education legislation will have much chance of becoming law during the next two years.

So, with the "within-party" politics as our focus, we offer these brief thoughts:

The GOP: No President Trump, now what?

REPUBLICANS

The Good

The Republicans defied the pollsters by gaining seats in the House and likely retaining control of the Senate. They can be proud that they overperformed the predictions of the pollsters and pundits in a significant way.

The Bad

President Trump lost, despite a stronger than expected performance, and the GOP will have to face up to the fact that it will have won the popular vote for President *just once* since the 1980s. And, despite gains in the House, the GOP will still be shut out of most of the serious legislative activity in the chamber for the coming two years.

The Questions

The biggest question for Congressional Republicans is what happens with President Trump and his supporters inside and outside of Congress – will the soon-to-be ex-President still control the GOP agenda even if he no longer holds office? If so, what does that look like?

Also, will Republicans cooperate with Democrats on any issues before Congress? How will their outside allies, especially in the conservative media, react to the election results – will they move even further to the populist right?

In the House, even with higher numbers, Republicans will have their hands full to just be relevant. House Republicans are likely to be uninclined to support the Biden agenda and, while they may never admit it, they seem most ideally suited to serve in the minority party and vote no rather than be forced to compromise and then be labeled as a "sellout" by their erstwhile friends. For most, it is an open question whether they will even have the desire to formulate alternatives

to Democratic proposals. This strategy may lead House Republicans to find themselves shuffled off to the far corners of the legislative process where they cry “fake news” and “the rules aren’t fair” while all the serious legislating is done elsewhere by Senator McConnell (R-KY), Representative Pelosi (D-CA) and President-elect Biden. On education policy, with a few exceptions like perhaps workforce development, education research, privacy or connectivity, we don’t expect House Republicans to play much of a role at all.

For many Senate Republicans, the calculation is different. They will likely be in the majority, and by sticking together they will have a considerable ability to advance and influence policy should they so choose. In fact, assuming Senator McConnell retains his position as GOP Senate Leader, he may well be the single most important person in the legislative process. Leader McConnell and the Senate GOP might often find themselves in the perfect legislative position; they will be able to complain and kill a big chunk of the President’s nominations and agenda almost at will, while at the same time they can cooperate and improve bills when it suits their political and policy needs. Even though it is not their top priority, Senate Republicans are likely to play a significant role in education policy debates; indeed, they may well have a huge say in their final outcome.

The Democrats

The Good

For Democrats, the very best news of the day was that they won the biggest prize: the Presidency. With a Democratic President comes complete control of the executive branch, the ability to appoint thousands to key positions in the government and the ability to set and propose policies on an incredibly wide range of subjects. And, for most Democrats, the cherry on top of this victory may well be the fact that they vanquished our current President, who so many strongly opposed.

The Bad

Based on the pre-election polls, and despite spending record amounts of money on their campaigns and running against a President with low approval ratings, Democrats significantly underperformed their predicted results. They were forecasted to win the Presidency more convincingly; Democrat control of the Senate is not likely; and they had a net loss of seats in the House – an outcome almost no one predicted. Clearly, while there is reason to be pleased, the high expectations of pundits, pollsters and the media were not met, and there is a strong tinge of disappointment that will linger among Democrats in Washington for a long while.

The Big Questions

The Biden agenda may well be the most ambitious of any incoming administration in the last 40 or 50 years. Much of it may have had a chance to be enacted with full Democratic control of Washington DC, but instead it looks like President Biden and Congressional leaders will have to pick and choose among their dozens of priorities and figure out how to cut deals with

Republicans if they are to accomplish much at all. Making choices means making some people unhappy, even friends. Which leads to two major questions: will the Democrats stick together as the internal debate over priorities and principles begins to take shape? Can Joe Biden, Nancy Pelosi, Chuck Schumer, Alexandra Ocasio-Cortez, Abigail Spanberger, Elizabeth Warren, Joe Manchin and Bernie Sanders find common ground?

And even if the Democrats remain unified, will they overreach and push the American electorate faster and farther than it is willing to go (again)? The core of the Democratic party in Congress – especially in the House – will remain progressive, and that is certainly where most of their strongest and supportive outside constituencies can be found as well. Democrats, after not having the presidency for four years and with prodding from outside groups, have an enormous amount of pent-up energy that they will no doubt direct toward pushing legislative policy as far leftwards as possible. However, given likely GOP control of the Senate, close margins in the House, and interests of the Democratic Members from both the House and Senate from “purple” districts and States, it will be interesting to see how the Democratic caucus holds together on issues like immigration, climate change, free college and the minimum wage, which have long been pushed by progressives. These splits were on full display last year, for example, when House Democrats tried, and failed, to bring a Higher Education Act (HEA) reauthorization bill to the floor and couldn’t muster sufficient support even with their own membership.

Priorities, Priorities, Priorities – where does education fit in?

Here is a quick, by no means exhaustive, list of key priorities of the new President and Congressional Democrats: measures to address the COVID-19 pandemic, climate change legislation, changes to the tax code, health care reform, immigration reform, election reform, free college, universal Pre-K, a minimum wage increase, trade policy and restoring various Obama foreign policy agreements.

With our focus at Penn Hill Group on education policy, we will especially be watching where education issues like free college, student loan debt, universal Pre-K, K-12, job training and many others fall on the priority list. It would be naïve to say that this internal debate among Democrats will be just about “policy.” Instead, we believe that politics will perhaps play an even more pivotal role in prioritizing issues up and down the Democrats’ list.

Education issues largely unify Democrats, and there are a great many constituencies, like teachers’ unions, educators and young voters, who are very important to the Democratic party and will be pressing for concrete action. An issue like free college may be too big of a lift to get over the finish line under these political circumstances, but we believe that Democrats could well calculate that a bipartisan agreement on at least some education issues may be easier to achieve than on some of other more controversial topics on the Biden agenda, and this could help push a few education policies toward the top of the legislative agenda next Congress.

Process: the key to understanding how to get things done

Process, Process, Process

Process is the ultimate “inside baseball” issue of Washington policy-makers and ultimately does not generate much interest or excitement outside of the beltway. But it matters, a lot, and in fact

process issues often make or break the legislative prospects of many bills. And, when it comes to process issues, this election was a huge disappointment for the Democrats due to the possible failure to take over the Senate majority and losing seats in the House.

In recent years, discussions about Congressional process ultimately seem to lead in one single direction: how to deal with the filibuster rule in the Senate that (mostly) requires 60 votes to pass legislation. In a nutshell, the filibuster rule allows an individual Senator of either party to block legislation unless those that oppose him or her can muster 60 or more votes in opposition. Nowadays, Republicans and Democrats rarely cross the aisle to vote with the other party – especially on major issues – so the filibuster rule seems to stop nearly all legislation in its tracks in the Senate. The practical impact of this is that the House, unencumbered by these rules, passes dozens and dozens of bills that go nowhere in the Senate and reauthorizations and individual appropriations bills, certainly with some exceptions here and there, rarely get signed into law.

This also means that the biggest (and sometimes only major) piece of legislation that gets signed into law every year is an omnibus appropriations bill at the end of the Congressional session that funds the entire government and contains a number of policy riders that cannot be passed any other way. The content of this bill is decided by a very small number of House, Senate and Administration officials (with most details being determined by key staff) with little or no input from others. This often severely limits the input of those with expertise on the various committees with jurisdiction over many of the issues that are contained in this huge piece of legislation.

In recent years, with Senators from both parties using their filibuster powers, legislation often grinds to a near halt in the Senate and consequently in Congress. With the legislative branch having neutered power to pass legislation, the executive branch has been ceded tremendous, often unchecked, authority to determine policy through expanded use of Executive Orders, regulations and other presidential powers.

Why the Georgia Senate votes matter so much

As we mentioned earlier, control of the Senate hinges on the outcome of the two elections in Georgia; the Democrats need to sweep both elections to gain nominal control of the Senate with the vote of Vice President-elect Harris. Control of the Senate, House and Presidency brings into play a myriad of procedural options for Democrats to get things done in Congress if – and this is a huge if – *all* Democrats vote together in the Senate and over 218 stick together in the House. Essentially, the outcome of the Georgia Senate races is likely to lay the foundation for two very different Congresses, one that at least provides some procedural options to leverage action in Congress, the other more likely to lead to continued gridlock.

Under the first option, a Democratic President, House and Senate would provide Democrats with the procedural control to jumpstart their policy agenda from day one. For example, Democrats could try to change the filibuster rule to make it much easier to pass bills in the Senate or even try to “pack” the Supreme Court by adding more justices. They could use the budget process to pass trillion-dollar reconciliation bills that might include Biden proposals on

taxes, infrastructure, climate change, health care, education, COVID-19 relief and more. They could unilaterally set overall spending levels and perhaps return earmarks to the appropriations process. And, they could use the Congressional Review Act (CRA) to quickly overturn some Trump Administration regulations that they opposed.

Now mind you, none of this would be easy – far from it – and it would require virtual unanimity to do most of these things without the cooperation of the GOP. (It brings to mind the old Will Rogers joke: “I am not a member of any organized political party; I’m a Democrat.”). But the possibility exists they could use at least some, if not all, of these procedures to get things done. And, don’t forget, sometimes the mere threat of using these processes can bring their opponents to the bargaining table.

But, alas, without control of the Senate, and most likely even if the Democrats have nominal control with 50 votes, they won’t likely be able to do any of these things. Instead, it looks as if President-Elect Biden’s legislative plans will force him to convince *all* Senate Democrats, from Bernie Sanders (I-VT) to Joe Manchin (D-WV), and then as many as 10 Republicans to get the 60 votes they need to pass major bills in the Senate, and that’s before trying to work with House Speaker Nancy Pelosi to pass legislation with a narrow partisan margin in the House. Ultimately, it seems like much of what happens for at least the next two years is going to boil down to whatever a new President Biden can work out with Senate GOP Leader McConnell, and then convince Speaker Pelosi to go along. Under these circumstances, passing big, comprehensive bills on controversial topics will be an uphill battle under the best of circumstances.

So, with Democrats in the White House and House, and the GOP controlling the Senate, can any education and workforce bills become law?

The answer is yes, of course, and a few bills still pass the old fashioned way, like the Career and Technical Education (CTE) reauthorization in 2018, the Workforce Innovation and Opportunity Act (WIOA) in 2014, the Elementary and Secondary Education Act (ESEA) reauthorization in 2015 and criminal justice reform in 2018 to name a few, but not many. Ultimately, the power is in the hands of the Senate Republicans. Any big bills that are going to have a chance to get signed into law will require bipartisan support and will likely require a big push by the Biden Administration to make it through the legislative process in this environment.

So that is it then, not much will pass Congress again over the next two years?

Not so fast. Clearly, massive omnibus appropriations bills will still pass for the simple (procedural) reason that, if they don’t pass, the Federal government will not be able to function. And, it’s worth noting that enormously consequential legislation to address national emergencies like 9/11, the financial crisis of 2007 and 2008, and COVID-19 have passed with bipartisan support over the last two decades, despite the filibuster, through a somewhat normal legislative process. Without filibuster changes, and with close margins in Congress, passing full-scale reauthorizations and major pieces of legislation will still be an uphill battle that will take considerable time, compromise and patience.

The Administration can still act on its own, without Congress, on many issues

Recent Presidents have dramatically expanded the power of the executive branch to act on its own, and Presidents who find themselves stymied by Congress often turn to the Federal rulemaking process or Executive Orders to accomplish as much of their agenda as possible. In practical terms, this means issuing new executive orders and rescinding old ones; reinterpreting laws; drafting new regulations; issuing new guidance; creating new grant-making opportunities and priorities for such grant opportunities and generally operating Federal programs in keeping with Presidential priorities. There are certainly checks on the Administration's rulemaking powers; it must stay within the boundaries of its own (and the judiciary's) interpretation of the law, the rulemaking process itself is often cumbersome and time-consuming, and Federal courts can and do check the Administration's rulemaking authority (but often this process is long and drawn out and at times lets a President take significant actions even if the Administration is overruled later on). Even with a somewhat cooperative Congress, we expect this new Administration to push its executive powers on a wide range of issues – including education – as far as it can. However, changes to some issues (such as HEA Title IV issues dealing with student financial aid) require the Administration to engage in negotiated rulemaking (neg-reg), which can take several months and requires engagement from various stakeholders.

People: Out with old, in with the new: The 117th Congress and the Biden/Harris Administration

Steady at the Helm: No big leadership changes in Congress, except...

Many times, right after an election, the number one inside-the-beltway parlor game centers on leadership battles in Congress in one or both political parties. In this case, and at this point, with the small exception of a few minor leadership offices in the House, we expect that the top leaders of both political parties will stay the same for the coming two years. We should add, however, that both Speaker Pelosi and Senate Democratic Leader Schumer (D-NY) are likely to face significant blow-back in their caucuses from Members unsatisfied with the election results, and perhaps might face some opposition. As the old adage goes, however, you can't beat someone with no one, and there is currently no announced challenger to either leader.

Speaker Pelosi is formally seeking another two years as Speaker of the House, which likely means she will remain in her position and continue as the most powerful – and certainly most visible – congressional Democrat. She will likely be joined by the current leadership line of Majority Leader Steny Hoyer (D-MD), Whip Jim Clyburn (D-NC) and Caucus Chair Hakeem Jeffries (D-NY). Each of these leaders, with the exception of Caucus Chair Jeffries, is at an advanced age and has held his or her position (both in the majority and minority) for many, many years, and it could well be their final terms in their positions.

On the Republican side, Rep. Kevin McCarthy (R-CA) appears very likely to retain his top position as GOP House Leader with Rep. Steve Scalise (R-LA) remaining GOP Whip. Rep. Liz Cheney (R-WY) may face competition for her current position as the House Republican Conference Chair, as some House Republicans believe she was insufficiently supportive of

President Trump and therefore might support a challenger. On the House Education and Labor Committee, Chair Bobby Scott (D-VA) and Ranking Member Virginia Foxx (R-NC) are expected to retain their current leadership roles, with some shuffling of Subcommittee Chairs and Ranking Members. While it is not yet clear what the exact breakdown of Democratic versus Republican Members will be, it is possible the loss of Democrat seats in the House leads to one additional GOP seat on the Education and Labor Committee depending on the overall partisan ratio in the House. On the Republican side, three Members are retiring, and no Member ran an unsuccessful race. On the Democrat side, one Member is retiring, and one Member ran an unsuccessful race, with two races yet to be called. In addition to the openings created as a result of retirements and the election, it should also be noted that, particularly in the GOP, there are likely to be a lot of changes as Members rotate to other Committees.

On the House Appropriations Committee, the other major Committee that regularly deals with education issues, Rep. Rosa DeLauro (D-CT) is running for Chair of the full Appropriations Committee. If she is elected, it is not certain whether she will retain her position as the leader of the Labor, Health and Human Services-Education (LHHS) Subcommittee or who her replacement might be. However, Democratic full Committee Chairs are generally permitted to chair a Subcommittee, so it is certainly likely that Rep. DeLauro would retain the LHHS Subcommittee Chair if she wins the full Committee Chairmanship. Of note, Representatives Debbie Wasserman-Schultz (D-FL) and Marcy Katpur (D-OH) are also running for the full Committee Appropriations Chair. Rep. Tom Cole (R-OK) is expected to retain his position as the senior GOP member on the LHHS subcommittee.

In the Senate (and assuming that the Republicans maintain their majority), Senator Schumer seems poised to keep his position of Senate Minority Leader with Dick Durbin (D-IL), retaining the number two Assistant Leader role. The leadership lineup for Senate Republicans will likely continue to be Senator Mitch McConnell as Majority Leader, Senator John Thune (R-SD) as Assistant GOP Leader and Senator Roy Blunt (R-MO) as GOP Senate Conference Chair. Senator McConnell will clearly be the number one most powerful Republican in Washington.

On the Senate HELP Committee, we expect Senator Patty Murray to retain the role of Ranking Member of the Committee. On the GOP side of HELP, there will be a huge hole at the top slot with the retirement of Senator Alexander. Senator Alexander is a longtime fixture for Congressional Republicans and for the past decade or more was more responsible for setting the education agenda for Congressional Republicans than any other Member of Congress. At this writing, it appears that his most likely replacement is either Senator Richard Burr (R-NC) – who is currently facing an ethics investigation that might prevent him from assuming this position until it is resolved – or Senator Rand Paul (R-KY). Both members have had much less involvement in education issues over the past several years than Senator Alexander, and both (particularly Senator Paul) are likely to bring a much different perspective on education policy. Another possible candidate (should Senator Paul not seek the position) is Senator Susan Collins (R-ME).

On the Senate Appropriations Committee, we assume no changes at the helm of the full Committee with Senator Richard Shelby (R-AL) staying on as Chairman and Senator Patrick

Leahy (D-VT) remaining Ranking Member. On the LHHS subcommittee, we expect Senator Blunt to retain his position as the Chairman, with Senator Murray retaining her position as Ranking Member.

Below are the election outcomes for the current Members of the House Education and Labor Committee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Scott, Robert	D	VA	Re-elected
Davis, Susan	D	CA	Retiring
Grijalva, Raul	D	AZ	Re-elected
Courtney, Joe	D	CT	Re-elected
Fudge, Marcia	D	OH	Re-elected
Sablan, Gregorio	D	MP	Re-elected
Wilson, Frederica	D	FL	Re-elected
Bonamici, Suzanne	D	OR	Re-elected
Takano, Mark	D	CA	Re-elected
Adams, Alma	D	NC	Re-elected
DeSaulnier, Mark	D	CA	Re-elected
Norcross, Donald	D	NJ	Re-elected
Jayapal, Pramila	D	WA	Re-elected
Morelle, Joseph	D	NY	Re-elected
Wild, Susan	D	PA	Re-elected
Harder, Joshua	D	CA	Re-elected
McBath, Lucy	D	GA	Re-elected
Schrier, Kimberly	D	WA	Not called yet
Underwood, Lauren	D	IL	Not called yet
Hayes, Jahana	D	CT	Re-elected
Shalala, Donna E.	D	FL	Lost election
Levin, Andrew	D	MI	Re-elected

Omar, Ilhan	D	MN	Re-elected
Trone, David	D	MD	Re-elected
Stevens, Haley	D	MI	Re-elected
Lee, Suzanne	D	NV	Re-elected
Trahan, Lori	D	MA	Re-elected
Castro, Joaquin	D	TX	Re-elected
Foxx, Virginia	R	NC	Re-elected
Roe, David	R	TN	Retiring
Thompson, Glenn	R	PA	Re-elected
Walberg, Timothy	R	MI	Re-elected
Guthrie, Brett	R	KY	Re-elected
Byrne, Bradley	R	AL	Retiring
Grothman, Glenn	R	WI	Re-elected
Stefanik, Elise	R	NY	Re-elected
Allen, Rick	R	GA	Re-elected
Smucker, Lloyd	R	PA	Re-elected
Banks, James	R	IN	Re-elected
Walker, Mark	R	NC	Retiring
Comer, James Jr.	R	KY	Re-elected
Cline, Benjamin	R	VA	Re-elected
Fulcher, Russell	R	ID	Re-elected
Wright, Ron	R	TX	Re-elected
Meuser, Daniel	R	PA	Re-elected
Johnson, Dustin	R	SD	Re-elected
Keller, Frederick	R	PA	Re-elected
Murphy, Gregory	R	NC	Re-elected

Van Drew, Jefferson	R	NJ	Re-elected
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House Appropriations: If Rep. Rosa DeLauro (D-CT) is chosen to be Chair of the full Appropriations Committee, we would expect her to also retain the Chair of the LHHS Subcommittee. We expect Rep. Cole will likely remain as the Ranking Member. We largely expect the makeup of this Subcommittee to remain the same.

Below are the election outcomes for the current Members of the House LHHS Appropriations Subcommittee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
DeLauro, Rosa	D	CT	Re-elected
Roybal-Allard, Lucille	D	CA	Re-elected
Lee, Barbara	D	CA	Re-elected
Pocan, Mark	D	WI	Re-elected
Clark, Katherine	D	MA	Re-elected
Frankel, Lois	D	FL	Re-elected
Coleman, Bonnie	D	NJ	Re-elected
Cole, Tom	R	OK	Re-elected
Harris, Andy	R	MD	Re-elected
Beutler, Jaime H.	R	WA	Re-elected
Moolenaar, John	R	MI	Re-elected
Graves, Tom	R	GA	Retiring

Senate HELP Committee: At this time, Republicans have three open seats to fill with the retirement of Sens. Alexander, Enzi and Roberts. (There could be more changes depending on election results, including if Senator Kelly Loeffler (R-GA) loses her race.) If Members in either party decide to switch to other Committees, additional Republican or Democratic seats could open up.

Below are the election outcomes for the current Members of the Senate HELP Committee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Alexander, Lamar	R	TN	Retiring

Enzi, Michael	R	WY	Retiring
Burr, Richard	R	NC	*
Paul, Rand	R	KY	*
Collins, Susan	R	ME	Re-elected
Cassidy, Bill	R	LA	Re-elected
Roberts, Pat	R	KS	Retiring
Murkowski, Lisa	R	AK	*
Scott, Tim	R	SC	*
Romney, Mitt	R	UT	*
Braun, Mike	R	IN	*
Loeffler, Kelly	R	GA	Undecided, in runoff election
Murray, Patty	D	WA	*
Sanders, Bernie	I	VT	*
Casey, Robert Jr.	D	PA	*
Baldwin, Tammy	D	WI	*
Murphy, Chris	D	CT	*
Warren, Elizabeth	D	MA	*
Kaine, Tim	D	VA	*
Hassan, Maggie	D	NH	*
Smith, Tina	D	MN	Re-elected
Jones, Doug	D	AL	Lost election
Rosen, Jacky	D	NV	*

**No election this cycle*

Senate Appropriations: We do not expect significant changes on the Senate LHHS Subcommittee with Chairman Roy Blunt (R-MO) and Ranking Member Patty Murray (D-WA) likely maintaining their current roles.

Below are the election outcomes for the current Members of the Senate LHHS Subcommittee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Blunt, Roy	R	MO	*
Shelby, Richard	R	AL	*
Alexander, Lamar	R	TN	Retiring
Graham, Lindsey	R	SC	Re-elected
Moran, Jerry	R	KS	*
Capito, Shelley	R	WV	Re-elected
Kennedy, John	R	LA	*
Hyde-Smith, Cindy	R	MS	Re-elected
Rubio, Marco	R	FL	*
Lankford, James	R	OK	*
Murray, Patty	D	WA	*
Durbin, Richard	D	IL	Re-elected
Reed, John	D	RI	Re-elected
Shaheen, Jeanne	D	NH	Re-elected
Merkley, Jeff	D	OR	Re-elected
Schatz, Brian	D	HI	*
Baldwin, Tammy	D	WI	*
Murphy, Chris	D	CT	*
Manchin, Joe	D	WV	*

**No election this cycle*

Key players in the transition and new Administration

Former Vice President Joe Biden has an incredibly difficult task over the next 60 days of beginning to put in place the next Administration: White House staff, Cabinet Secretaries, subcabinet officials – some 4,000 in all. You can find more details about the policy and supporting positions in the [Plum Book](#). However, with the Senate expected to remain under GOP control, the incoming Biden Administration will likely face opposition to the confirmation of its cabinet officials and other nominees requiring Senate confirmation. The Senate GOP, with its majority status, will be able to block consideration of nominees whom its members do not support by simply not scheduling confirmation votes. Senate GOP Committee Chairs will also have the power to forgo nomination hearings and Committee action on nominees they deem unacceptable. In short, the Biden Administration will likely run into roadblocks in getting its cabinet and subcabinet officials confirmed by the GOP controlled Senate, at least in an expedited manner.

The President-elect has a long bench of policy experts from his prior political life and from previous Democratic administrations ready to step in and he will rely on a network of key players, particularly when it comes to issues around education. It is important to note that, as a First Lady with a strong background in K-12 and higher education, First Lady Biden will likely take a strong interest in and have influence over education policy.

At this point, six days after the election, there is not a lot of information publicly available, but as personnel announcements are made, we will certainly do our best to make this information available. To date, those key players have included:

Domestic policy leaders in the campaign

Stefanie Feldman: Feldman is the policy director for the Biden campaign and is especially well versed in issues related to healthcare reform and the environment. Previously, Feldman was director of policy at the Biden Institute at the University of Delaware. From 2012 to 2015, she held multiple positions in the Office of Vice President Biden including policy analyst, assistant director for policy, associate director for policy and deputy director for domestic and economic policy.

Grace Landrieu: Landrieu is the current deputy policy director for the Biden campaign. Landrieu previously served as special projects director for the Nevada State Democratic Party 2018 coordinated campaign. In the private sector, Landrieu worked as deputy director of product design and senior business analyst for New Classrooms from 2013 to 2016. She spent the year prior as associate product manager at Amplify, a K-12 education management company with a focus in curriculum and formative assessment. From 2010-2012, Landrieu worked as a Teach for America corps member and was an 8th-grade teacher in New Orleans.

Carmel Martin: Martin has been a senior advisor for the Biden campaign, though she most recently held the position of national policy director for Beto for America. From 2017-2019, Martin was managing director for Emerson Collective and prior to that position she spent four years as the executive vice president for policy at Center for American Progress. In the Obama Administration, Martin was the Assistant Secretary for Planning, Evaluation and Policy Development at the U.S. Department of Education, where she led the Department's policy and budget development activities and served as a senior advisor to Secretary of Education Arne Duncan. Before joining the Department of Education, Martin served as general counsel and

deputy staff director for the late Senator Edward Kennedy (D-MA) as Chairman of the HELP Committee.

Bruce Reed: Reed is a senior advisor for the Biden campaign. Reed is also the co-founder and CEO of Civic, a bipartisan policy ideas company. He previously worked as a senior policy advisor to the Emerson Collective and from 2013 to 2015, he served as President of the Broad Foundation. Reed has moved between the private and public sector, serving as chief of staff to Vice President Biden from 2011 to 2013, and President and CEO of the non-profit Democratic Leadership Council from 2001 to 2010. During the Clinton administration, he served as assistant to the President for domestic policy from 1996 to 2001 after serving as assistant to the President for domestic policy planning for one year.

External Advisory Committees

Larry Strickling: Strickling is the policy coordinator for Biden for President, though he previously served as policy coordinator for Pete Buttigieg's primary campaign. In 2018, Strickling acted as executive director for the Collaborative Governance Project. In the public sector, Strickling served as Assistant Secretary for Communications and Information at the Department of Commerce for seven years, from 2009 to 2017. Prior to this position, Strickling served as policy coordinator for Obama for America. Strickling also worked for Broadwing Communications, LLC as chief regulatory and chief compliance officer from 2004 to 2007.

Education

Mala Adiga: Adiga is the director for higher education and military families at the Biden Foundation. She previously served in the U.S. Department of State in the Secretary of State's Office of Global Women's Issues as chief of staff and senior advisor to the Ambassador-at-Large, and then as deputy assistant secretary in the Bureau of Educational and Cultural Affairs, overseeing a wide range of international educational programs, including the Fulbright and Gilman Programs.

Official Transition

Yohannes Abraham: Abraham manages the day-to-day operations of the Transition team. He is an adjunct lecturer in public policy at the Harvard Kennedy School, where he previously served as a residential fellow at the Institute of Politics. Prior to lecturing at Harvard, Abraham served as senior advisor at the Obama Foundation, helping to set up the new organization as interim chief operating officer. Before joining the Obama Foundation, Abraham served in the White House as senior advisor to the National Economic Council, and deputy assistant to the President and chief of staff of the Office of Public Engagement and Intergovernmental Affairs. During President Obama's first term, Abraham served in the White House Office of Legislative Affairs and as national political director of Organizing for America after serving as Senator Obama's Virginia Field Director in the 2008 general election. Abraham currently sits on the Democratic National Committee's Rules and Bylaws Committee.

One of the first major insights into Biden's education agenda will be his selection of a Secretary of Education. Prior to the election, many names were circulated as potential nominees, including Randi Weingarten, president of the American Federation of Teachers (AFT), and Lily Eskelsen Garcia, former president of the National Education Association. Weingarten has said publicly that she is not seeking the post. Since the election, it has been reported that the AFT has

recommended, for the Secretary position, Denise Juneau, Seattle Public Schools Superintendent; Eduardo Padrón, president emeritus of Miami Dade College; and Betty Rosa, New York's interim state education commissioner. Additionally, according to reports, Democrats for Education Reform is recommending Janice Jackson, Chief Executive Officer of Chicago Public Schools; Sonja Brookins Santelises, CEO of Baltimore Public Schools; and William Hite, Philadelphia Superintendent as possible nominees for the position.

One thing is guaranteed in the coming days: many new names will emerge on lists compiled by pundits and what often is the case is that many, if not all, will be wrong. Penn Hill Group will be tracking and reporting on potential candidates as more information becomes available.

Beyond the Secretary of Education, Biden will have to fill other key jobs within the Department of Education, including Deputy and Under Secretary, and Assistant Secretaries, as well as positions in the White House Domestic Policy Council and Office of Management and Budget (OMB) – all of which are crucially important to the consideration of education policies moving forward. At this time, it is simply too early to guess who will ultimately fill many of these positions, though many names will begin to emerge in the coming days.

Policy: Big changes coming or more of the same?

A disappointing 116th Congress

Looking at the big picture, outside of a controversial Supreme Court confirmation, several COVID-19 relief bills, and a few other bills, not much was accomplished by the current, bitterly divided and partisan Congress: no reforms on immigration, infrastructure, climate change or health care, to name but a few issues. That said, it is also true that this Congress faced unprecedented challenges, including a pandemic, a Presidential impeachment and a growing call for racial justice that produced widespread protests throughout much of the country.

Education policy, like so many other issues, got caught up in the partisan divide and the swirl surrounding the pandemic, leading to very little of consequence being passed. That said, Congress was able to pass several critical bills, including COVID-19 relief, the FUTURE Act and an Older Americans Act reauthorization (which is discussed in more detail below). Below is a quick review of key policies, actions and events that were implemented and occurred during the 116th Congress, in no particular order:

The Courts: President Trump nominated his third Supreme Court Justice, Amy Coney Barrett. She was confirmed on October 26 and her confirmation leaves the Supreme Court with a 6-3 conservative majority.

Coronavirus Relief Packages: The 116th Congress passed a number of COVID-19 relief packages in 2020. The first COVID-19 relief package, the Coronavirus Preparedness and Response Supplemental Appropriations Act ([P.L.116-123](#)), included \$8.3 billion in emergency funding and was signed into law on March 6. The bill was focused on vaccine development, research and equipment stockpiles and supporting State and local health budgets. The bill did not contain any education- or workforce-related provisions. The second COVID-19 relief package, the Families First Coronavirus Response Act ([P.L.116-127](#)) was signed into law on March 18, and provided \$1 billion in nutritional aid, expanded access to COVID-19 testing and expanded sick leave benefits. The biggest (dollar-wise) COVID-19 legislation was the Coronavirus Aid Relief and Economic Security (CARES) Act ([P.L.116-136](#)). This package, which was signed into law on March 27, included roughly \$2 trillion in emergency funding for

States, businesses and individuals. It included an Education Stabilization Fund that provided funds to Governors, State and local educational agencies (SEAs and LEAs) and institutions of higher education (IHEs).

Older Americans Act Reauthorization: In March, Congress passed the Supporting Older Americans Act of 2020, which reauthorized the Older Americans Act (OAA). It extended OAA for five years and increased authorized funding levels for its programs by 7 percent in FY2020 and 6 percent for FY2021 to FY2024. It strengthened existing programs under the Act that support caregivers of the elderly, nutritional services, disease prevention, arts and cultural supports to seniors and workforce training.

FUTURE Act: The 116th Congress passed and President Trump signed the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act into law. This law permanently authorized mandatory funding for minority-serving institutions (MSIs), including Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs). The bill also required ED and the Internal Revenue Service (IRS) to implement a data-sharing process that would transfer taxpayer data from the IRS to ED with the goal of reducing the amount of information required to be collected via the Free Application for Federal Student Aid (FAFSA).

Spending Increases: Notwithstanding the Administration's proposed budget cuts to education, Federal education spending rose and, in some key areas such as Part B of the Individuals with Disabilities Education Act (IDEA) and Title I of ESEA, funding rose measurably. Notably, no major new programs initiated by the Administration or Congress were funded.

Regulations - Some Come, Some Go: Among the numerous regulations and guidance put forward by the Administration over the past four years, we want to highlight some major actions. For an overview of all the regulations and guidance issued over the past four years, please see page 36. We saw the final publication of the current Administration's version of a Borrower Defense to Repayment regulation, a new Title IX regulation and accreditation regulations. In terms of elimination, the Trump Administration repealed the Obama-era Gainful Employment rule. In the K-12 space, the Administration released updated guidance on equitable services, among other issues.

Clearly, at least when it comes to education policy these past two years, not a whole lot was done in either the legislative or executive branches that will likely leave a lasting impact.

But, there is still a little time left on the clock.

Another lame-duck Congress?

Lame-duck action is always very hard to predict, and this year is especially difficult due to the election of a new President and the issues facing Congress and the current Administration. Handicapping the odds of an unpredictable President who is clearly unhappy with the election outcome making a deal with Congressional Democrats who are also disappointed with the election returns is just not easy.

What we do know, however, is that there seem to be three major legislative initiatives on the Congressional docket before the end of the year, and at least one of them (an appropriations bill to keep the government open) must get done before Congress adjourns. Each of these will have at least some impact on education policy, and they are:

National Defense Authorization Act (NDAA): Nowadays, the NDAA seems to be the only reauthorization bill Congress passes every year, but it is currently in peril as a number of Congressional Democrats are pushing their leaders to refuse to make the changes that would be necessary to compromise with a Republican Senate. And, they want to push the bill off until next year when Democrats are in a better negotiating position. There are a handful of higher education provisions that could be included as part of this bill if it passes, including the adoption of a new 90-10 rule through the Veterans Administration, which would largely impact for-profit institutions, and possibly a version of retiring Senator Alexander's FAFSA reform legislation.

COVID-19 Aid: The "negotiation-that-never-ends" between the Trump Administration and Speaker Pelosi continues, and it is possible they could come to an agreement during the final days of the Trump Administration and work together to muscle a COVID-19 relief bill through Congress. Senate GOP Leader McConnell's call for action before the end of the lame duck on a COVID-19 relief bill may provide some momentum, but ultimately House Democrats have to decide whether they can lower their expectations on the overall dollar amount and type of relief to more closely match what the Senate GOP has been proposing. If a deal is possible, it is likely to be much smaller than the \$2.2 billion package House Democrats recently proposed as part of the updated HEROES Act. For more information on the details of the Democrat's most recent bill that passed the House and the Senate GOP bill, see [here](#).

Appropriations: A Continuing Resolution (CR) was signed into law on October 1, which punted the annual debate about funding the operations of the government to the lame-duck session. The CR expires on December 11 and is the one "must pass" bill left on the agenda before Congress adjourns.

There are several options on the table to deal with this bill, and President-elect Biden will no doubt have considerable influence through his Congressional allies on how this issue ultimately is resolved. These options include:

- **Pass the buck.** This option is most likely if President Trump is unwilling to negotiate and Congress is only able to pass a CR (possibly with a small dose of COVID-19) until February/March when the new President and Congress are in office. This option is certainly on the table as it passes the debate on FY2021 funding levels on to the President-elect. While the parties will already have an overflowing plate of issues to address next year, this option would force this issue to rise to the very top of their agenda, while at the same time denying the current Congress one last chance to have an impact on Federal policy as it goes out the door. If Congress fails to at least do this, it's possible, though hopefully unlikely, we could be looking at yet another government shutdown during the waning days of the Trump Administration.
- **Regular(ish) Order.** The cleanest option would be to pass an omnibus appropriations bill that fully funds the government for the remainder of the fiscal year, leaving a clean slate for the incoming Congress and President. This option would require both parties in Congress and President Trump to agree on the bill's contents, which also could include at least a few additional COVID-19 aid provisions (but certainly not the entire HEROES Act) to tide the country over until the next Administration, but this may be just asking too much given the prevailing attitudes of the day.
- **The big deal.** The last option would include combining an omnibus appropriations bill, a significant COVID-19 relief package and an NDAA agreement along with some other miscellaneous measures. Such an effort would close out all of the pressing FY2021 and COVID-19 related issues (for the time being) and allow the new Congress and President to get their footing and focus on other matters.

Miscellaneous legislation: We use this catchall category to include any last-minute bills that could be passed with little or no attention at the end of the Congress as it adjourns. We have been around long enough to see various bills that seemed to be dead get resurrected – either on their own or as part of other, often unrelated legislation – during the waning hours and signed into law at the last minute. We don't foresee much, if anything, passing that way at the end of this acrimonious Congress, with the possibility of a few exceptions. Education proposals with some chance of passing this way include: FAFSA simplification, restoring Pell Grants for incarcerated individuals, the Education Sciences Reform Act (ESRA) reauthorization, changes to 90-10, and the College Transparency Act, which deals with improving education data collection at the Federal level. Out of this list, FAFSA simplification likely stands the best chance to pass as this is one of retiring Senator Alexander's major priorities, but even that will be an uphill battle.

Buckle up for the First 100 Days

We fully expect the early days of the Biden Administration to be packed with activity, in both the executive and legislative branches, largely led by a staff that is fully experienced in how to work the machinery of the Federal government. While it is far too soon to know the exact make-up of the Biden agenda for his first 100 days and beyond, we can make an educated guess that its focus is likely to be on four key areas:

Executive Branch Actions

Staffing up. Veterans of Washington know that getting the right people for the right jobs is often the single most important ingredient for policy success. Clearly, from day one through the first 100 days and beyond, the hiring process will be a major focus of the Biden-Harris team.

Executive actions that don't require the approval of Congress. President-elect Biden, like all of the modern Presidents before him, will no doubt have his team hyper-focused on identifying the actions he can take as the new President to implement his agenda. First and foremost, we expect him to rescind executive orders issued by President Trump that are particularly objectionable to Democrats. Second, we expect him to widely use his powers to issue Executive Orders, regulations and guidance, and to take other administrative actions to begin to refocus the executive branch's priorities. While not an exhaustive list by any means, here are some of the education-related areas that could get the executive branch's attention early:

- Immigration. The President will likely work to overturn many of the Trump Administration's rulings on immigration, especially those dealing with "DACA" and "Dreamer" students.
- Student Loan Forgiveness. This is a key priority of both the new Administration and several Congressional Democrats, and many believe the new President could use his executive authority to forgive a significant portion – some have suggested as much as \$50,000 per person – of the student loan debt that is currently held by borrowers. He may also have to take executive action to continue the no-loan-payment/no-interest/no-collections moratorium that currently exists for Federal student loans as a result of the COVID-19 pandemic.
- School Reopening Policy. The President could direct the Centers for Disease Control (CDC) and other Federal agencies to establish basic, objective criteria to guide State, tribal and local officials in deciding if and how school and child care reopenings can be managed safely in their communities.

- Pandemic Guidance. The new Administration is likely to formulate a more centralized effort at the White House and ED to work with States, districts, schools and practitioners to develop, adapt and share the latest tools for ensuring high-quality learning during the pandemic. It would focus on issues like safety, addressing learning loss, mental health, social and emotional wellbeing and systemic racial and socioeconomic disparities in education that the pandemic has exacerbated.
- Student Loan Servicing. The Administration could seek to halt, or at least significantly alter, the implementation of the Trump Administration’s Next Generation student loan servicing overhaul, especially if it is in the process of implementing administrative student loan forgiveness as we describe above.
- ESEA Waivers. Early on in the Administration, ED will have to decide on whether to provide waivers – particularly on assessment and other accountability issues – to address the challenges schools have faced as a result of the pandemic.
- Dear Colleague on Transgender Students. The Administration has been vocal about reinstating the Obama Administration’s guidance on transgender students and directing ED to vigorously enforce and investigate violations of transgender students’ civil rights.

Legislative Actions





Appropriations. If the current Congress and President Trump are unable to agree on an appropriations bill that will cover the remainder of FY2021, at some point early on in his Presidency Biden and the new Congress will have to tackle this issue, and it will obviously have a significant impact on funding for education and workforce programs.





COVID-19 Legislation. If agreement is not reached on a free standing COVID-19 relief bill or key provisions are not added to other must-pass legislation, passing legislation to address the pandemic seems most likely to be issue number one on the agenda when President-elect Biden takes office; in fact, even if there is an agreement while President Trump is still in office, this issue is still very likely to remain front and center. This legislation is crucially important to numerous constituencies, including education at all levels, which stands to receive over \$100 billion in funding if/when this legislation is finally passed.




Penn Hill Group Crystal Ball – Federal Education Policy Winners and Losers





Now that we have discussed the general landscape of the key players and committees in the Administration and new Congress, we are going to analyze some specific issue areas that will be affected by the outcome of the election, beyond the lame-duck and transitional periods.



Issue	Trending	Our Take
<u>Big Picture</u>		

<p>Administration's Influence</p>		<p>A new President - especially one that knows the inside ways of Washington - will have a lot of influence in the early days of his Administration – especially in the House.</p> <p>However, despite the President-elect's strong relationships with Senators from both parties, the Administration's influence with the likely Republican-controlled Senate will be limited.</p>
<p>COVID-19 Relief/ Economic Stimulus</p>		<p>A majority of Congress wants it, the new President wants it and the country needs it. However, if Congress passes a COVID-19 bill in the lame-duck, the timing, size and scope of any bill in the new Administration would likely be affected.</p>
<p>Bipartisanship</p>		<p>With the margins in both the House and Senate so close, on top of a highly contested Presidential election, it's hard to see how the partisan tensions that have existed for the past several years won't get worse.</p>
<p>Education Funding</p>		<p>Education funding is a top campaign priority of President-elect Biden and Democratic Congressional leaders. Less so for the</p>



		congressional GOP, though they have been supportive of significant COVID-19 relief funding for education.
Reauthorizations		With this Congressional lineup, it is hard to see how Democrats and Republicans can come together to reauthorize HEA, ESEA, WIOA, or Head Start but we expect bills to be introduced and at least attempts at reauthorizations, especially HEA.
Evidence-based Policy/ Focus on Science		The Biden Administration has proposed to direct a White House-led initiative to identify evidence-based policy solutions to focus on issues the pandemic has exacerbated.
Social Justice Reform and Racial Equity Issues		As pockets of social unrest have continued across the country, this issue will be high on the list of the supporters of the President-elect and Congress and compromise is possible with some GOP senators.
Immigration		We expect the Biden Administration to take any administrative action it can early on but passing legislation in Congress will be very difficult.





Higher Education		
Free College		Free college proposals likely require action from Congress and aren't expected to go far.
Student Debt Relief		<p>This topic may have been the education issue that received the most attention during the campaign, and we expect President Biden to take action.</p> <p>Debt-relief could potentially be handled administratively and is likely to happen early on.</p>
Simplify the FAFSA		<p>This could possibly be addressed during the lame-duck session. If not, it seems very likely to be included in an HEA reauthorization or perhaps a smaller package of reforms that might move in the place of a wholesale reauthorization.</p> <p>The Administration may also take some steps to simplify the FAFSA on its own.</p>




<p>Accreditation Revision</p>		<p>ED issued a final rule on this topic in November of 2019, though perhaps some of these issues could be addressed again by the new Administration. The larger changes - such as the Democrat's desire to tighten accountability for low-performing schools - will have to await an HEA reauthorization.</p>
<p>Loan Repayment Plan Simplification</p>		<p>The question seems to be more when, rather than if, as there is bipartisan support in Congress and in the new Administration for acting on this issue at some point.</p>
<p>For-Profit Education</p>		<p>The Administration and House Democrats will ramp up their oversight of for-profit education providers. The Administration is likely to take administrative action on this issue early in their tenure.</p>
<p>Regulations and Legislation addressing Campus Sexual Assault</p>		<p>Democrats oppose the Trump Administration's final Title IX regulations, and the new Administration will likely take steps to pare them back early on.</p>





<p>Student Unit Record</p>		<p>There is bipartisan momentum to remove the ban on a student unit record in HEA. This seems most likely to get done if there is an HEA reauthorization. That said, new Senate HELP Committee leadership's views on this topic will matter and are currently unknown.</p> <p>The GOP leader of the House Education and Labor Committee (Rep. Foxx) strongly opposes lifting the student unit record ban, so her objections may also need to be overcome for this to become law.</p>
<p>Accountability in Higher Education</p>		<p>While bipartisan interest exists for adding accountability measures to an HEA reauthorization for all schools, especially for-profits, getting to an agreement on the details and overcoming the opposition of the higher education community will be a tough battle with an uncertain outcome.</p>





Elementary and Secondary Education




<p>Assessments</p>		<p>Anti-standardized testing and “opt out” efforts have increased in several States. Testing opposition by teacher unions and other members of the education community, along with COVID-19 implications, have impacted support for Federal testing requirements more than any time in the last decade.</p> <p>The Biden Administration could use broad waiver authority to pause assessments indefinitely. However, a permanent change on this issue would have to be done through a reauthorization of ESEA.</p>
<p>Congressional Oversight over ESEA Implementation by ED</p>		<p>This issue has taken a backseat due to COVID-19 and is likely to remain there.</p> <p>However, there may be hearings to assess progress on ESEA implementation, especially due to COVID-19.</p>


ESEA Title I Funding		The Biden Administration has committed to tripling Title I funding with a priority for increasing teacher salaries, though this will clearly be a tall order, especially with a GOP Senate
ESEA Title II-A		We expect the incoming Administration to support an increase in funding for Title II-A.
IDEA Funding and Reauthorization		<p>We do not expect there to be any significant effort to reauthorize IDEA in the new Congress, but we do expect some initial hearings on its reauthorization.</p> <p>The new Administration has committed to fully funding IDEA, and there is support in both parties for doing so; however, this support has existed for some time and has not translated into action.</p>
Accountability for K-12 education		<p>The COVID-19 pandemic has exacerbated an already active call in many communities to reduce the Federal accountability requirements in current law. The Biden Administration could use broad waiver authority to pause assessments indefinitely.</p> <p>However, except for annual assessment</p>

		waivers due to the pandemic, it would take a reauthorization of ESEA to actually make a lasting change.
Student Privacy		The Biden Administration has stated that it will ban the storing, sharing, and sale of student data by for-profit companies. The Administration could also regulate on this issue, but it will likely not be a top priority. Congress has been unable to deal with this issue in the past.
Private School Choice		The Biden Administration and Congressional Democrats strongly oppose this policy. Even when Republicans had unified control of Congress and the Presidency, they failed to advance this issue.
Charter Schools		President-elect Biden and House Democrats have continued to send mixed signals about their support of this program over the past few years, and the Charter School Program is in danger of continuing to lose some of its bipartisan support. Key Senate Republicans are expected to continue their support of the program.

School Safety		This issue has received increased attention in the context of COVID-19 and calls for social justice - such as through the increased push to remove School Resource Officers (SROs) from public schools.
Nutrition		All of the COVID-19 relief packages have addressed student and family nutrition needs, and we expect this to continue. The Biden administration is also likely to regulate nutrition programs much differently than the current Administration.
<u>Other Programs</u>		
Child Care Issues		This is one issue that retains strong support of the President and bipartisan support in Congress.
Early Childhood Issues		There is some bipartisan agreement on the need to take action on this issue at the Federal level, but big differences exist on funding levels. We expect early childhood education to get increased attention, but movement will depend on how much the Biden Administration prioritizes this issue.

CTE Funding and Implementation		This is a bipartisan issue, so implementation of the Perkins-CTE law should continue without much commotion. There could be increases in funding for CTE.
Education Sciences Reform Act (ESRA) Reauthorization		While this past Congress showed little interest in passing an ESRA reauthorization, this issue could present Congress with an easy, bipartisan win early on.
Education Research		With continued learning loss due to distance learning and the pandemic, we expect support for education research to continue with the possibility of some focus on education research in the next COVID-19 relief package.
Support for Libraries and Museums		<p>Historically, this has been an overwhelmingly bipartisan issue.</p> <p>In this Congress, House Democrats will likely take interest in this issue as it could present an opportunity to increase funding for infrastructure and broadband as part of library funding.</p>

<p>Broadband and Closing the Digital Divide</p>		<p>There is increasing bipartisan momentum for this issue and the incoming Administration has been vocal about increasing Federal investments in broadband infrastructure.</p> <p>This issue will span across K-12, higher education and adult education programs. If action on a COVID-19 relief bill is possible during the lame-duck, this issue may at least be initially addressed through such legislation.</p>
<p>Infrastructure</p>		<p>This is an on-again, off-again priority of the House and Senate Democrats. Education Committee Democrats will continue to push to have school infrastructure included in any broader package.</p> <p>Paying for a proposal of significant size will not be easy, but if there is a big, bipartisan agreement between the President and Congress, infrastructure legislation may be able to pass.</p>
<p>Workforce Programs</p>		<p>The new Administration is supportive of increasing funding for these programs, and there is some bipartisan support in Congress, but it is</p>

		unclear if this will be a priority. Washington policy makers - in both parties - just don't seem to have caught on yet to the urgent need to address workforce policy issues.
Adult Education		There has been an increased push for Federal funding to help adult education programs and adult learners to recover from the pandemic. We expect continued advocacy in this area.

THE FEDERAL EDUCATION AND WORKFORCE POLICY LANDSCAPE

Appropriations and Budget

FY2020 and FY2021 Appropriations: Congress passed the FY2020 LHHS appropriations bill and signed it into law on December 20, 2019, following two CRs. As far as the FY2021 appropriations process goes, we are currently operating under a CR that runs through December 11, 2020. This means that funding for Federal agencies will be on the table during the lame-duck session.

By law, the Administration must release its FY2022 budget proposal in early February 2021 (although it is often released late), at which point Congress should begin the appropriations process for FY2022. While leadership from both parties will express the desire to complete the appropriations process in time under “regular order,” it is too early to say whether Congress will be able to get a FY2022 LHHS appropriations bill done before the end of FY2021.

FY2022 Spending: A New Day: The other factor sure to affect action on the FY2022 LHHS appropriations bill is the overall discretionary spending authority for defense and non-defense spending. For the first time in many years there are no predetermined and statutorily enforceable budget caps on defense and non-defense discretionary spending. Prior to Congress adopting these spending caps in 2011 as part of the Budget Control Act, annual spending limits for discretionary spending were set through annual budget resolutions, or in years when such a resolution was not agreed to by both chambers, a resolution deeming such spending levels. The last two-year budget deal raised spending levels and suspended the debt limit until July 31, 2021. On August 1, 2021, the debt level will be reinstated at a level that covers all borrowing that occurred during the suspension. Congress will need to raise or otherwise address the debt limit.

Absent spending caps, Congress will need to set a level for discretionary spending for FY2022 while also having to deal with the nation's debt limit over the summer.

Authorizing Legislation

Below is a review of the expiration dates of key education and job training legislation:

Authorization Expiration	Legislation
FY2023	<ul style="list-style-type: none"> ● Juvenile Justice and Delinquency Prevention Act (JJDP)
FY 2022	<ul style="list-style-type: none"> ● Maternal, Infant and Early Childhood Home Visiting Program (MIECHV) in 511(b) of the Social Security Act ● Tribal Home Visiting Program in Sec. 511(h)(2) of the Social Security Act
FY 2021	<ul style="list-style-type: none"> ● Safe and Stable Families Program in Secs. 436 – 438 of the Social Security Act
FY 2020	<ul style="list-style-type: none"> ● Workforce Innovation and Opportunity Act (WIOA) ● Adult Education and Family Literacy Act (AEFLA) ● Rehabilitation Act ● Child Care and Development Block Grant (CCDBG) Act ● Runaway and Homeless Youth Act
FY 2019	<ul style="list-style-type: none"> ● Older Americans Act ● Elementary and Secondary Education Act (ESEA)
FY 2016	<ul style="list-style-type: none"> ● Museum and Library Services Act
FY 2015	<ul style="list-style-type: none"> ● Child Abuse Prevention and Treatment Act (CAPTA) ● Child Nutrition Act and National School Lunch Act ● Family Violence Prevention and Services Act

FY 2014	<ul style="list-style-type: none"> Higher Education Act (HEA)
FY 2013	<ul style="list-style-type: none"> America COMPETES Act
FY 2012	<ul style="list-style-type: none"> Head Start Act Native American Programs Act
FY 2011	<ul style="list-style-type: none"> Title II of the Higher Education Act (<u>note</u>: the rest of HEA expired in FY 2014)
FY 2010	<ul style="list-style-type: none"> Assistive Technology Act Individuals with Disabilities Education Act (IDEA) (<u>note</u>: Part B Grants to States is permanently authorized) Welfare Reform, through the Temporary Assistance for Needy Families (TANF)
FY 2009	<ul style="list-style-type: none"> Special Olympics Sport and Empowerment Act
FY 2008	<ul style="list-style-type: none"> Education Sciences Reform Act (Institute for Education Sciences) Educational Technical Assistance Act (Comprehensive Centers) National Assessment of Educational Progress (NAEP) Authorization Act Abandoned Infants Assistance Act
FY 2007	<ul style="list-style-type: none"> Developmental Disabilities Assistance and Bill of Rights Act
FY 2003	<ul style="list-style-type: none"> Community Services Block Grant (CSBG) Act
FY 1996	<ul style="list-style-type: none"> National Environmental Education Act (NEEA)

FY 1993	<ul style="list-style-type: none"> National Foundation on the Arts and Humanities Act
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The Elementary and Secondary Act (ESEA)

The Every Student Succeeds Act (ESSA), the most recent reauthorization of ESEA, was enacted in December 2015, a year before the start of the Trump Administration. At the time the Trump Administration took office, outgoing Obama officials had completed final regulations on key ESSA provisions, including academic assessments, accountability, State plans and report cards. Early in 2017, however, Congress, under the authority of the CRA, rescinded the regulations covering accountability, State plans and report cards. Following that action, ED implemented ESEA programs largely through the use of non-binding guidance packages (sometimes labeled “informational documents,” rather than “guidance”), State plan application packages, and the regulations on assessments that were carried over from 2016. The Trump Administration has not issued any ESEA regulations.

The following table displays the ESEA guidance documents issued by ED during the Trump Administration.

ED - ESEA Guidance	Status	Background Information
State and Local Report Cards	Final Guidance released September 2019	Guidance
Consolidated State Plan	Revised Template released March 2017 FAQs released June 16, 2017	Revised Template Frequently Asked Questions
Percentage of Students who may be Assessed with Alternate Assessments	Guidance released May 16, 2017 Guidance on consequences of not meeting the requirement released March 28, 2019	Guidance Guidance
Education of Homeless Children and Youth (McKinney -Vento Act)	Updated Guidance released August 2018	Updated Guidance

Title III (English Learners)	Addendum to the 2016 Guidance released January 2, 2019	Addendum Original 2016 Guidance as Revised in 2019
Title I Supplement, Not Supplant Requirements	Final Guidance released June 2019	Guidance Memorandum to State Directors
Title I Equitable Services to Private School Children, Teachers, and Families	Updated Guidance released October 7, 2019	Updated Guidance
Title I Within-District Allocations	Draft guidance released March 2020	Draft Guidance

Outlook for ESEA

While ESEA was technically up for reauthorization in 2019, we expect ESEA reauthorization to be a low priority for the Biden Administration and Congress, making it unlikely to occur in the coming Congress. Congress will continue to fund the programs in the current statute in absence of a continuing authorization of appropriations. States will continue to explore waivers of certain requirements, especially amidst the COVID-19 pandemic.

We predict the Biden Administration will seek increased funding for programs authorized under ESEA, especially Title I. Another major ESEA issue for the Biden Administration will be standardized testing and accountability requirements. The campaign has called for ending high-stakes testing, and we will be on the lookout for how this plays out in practice in the coming months. An early decision for the Biden Administration will be whether to grant waivers of assessment and accountability requirements under ESEA for the spring 2021 assessment window. We believe the Biden Administration may also try to issue ESEA Title I regulations since this Administration failed to do so.

With the House remaining in Democratic control, we expect continued oversight, likely in a toned-down manner however, of how ED spends COVID-19 relief funding in the K-12 space. We also expect hearings on how States are complying with ESEA requirements. Additionally, schools initially designated for Comprehensive Support and Improvement (CSI) under ESSA will be coming up against the law's deadline to demonstrate progress within four years or to implement additional interventions, and States will be required to make new identifications within three years. It is likely the House Education and Labor Committee will examine how school improvement is occurring in the States. We don't expect the GOP-controlled Senate HELP Committee to take much proactive action on ESEA, but that may depend on who takes the Chairmanship in the upcoming Congress (see above discussion of the GOP leadership of this Committee), and what their priorities may be.

Higher Education Act (HEA)

The authorization for HEA expired in FY2014 (except for the teacher preparation provisions under Title II, which expired in FY2011). However, HEA's programs continue to operate, as much of the costs associated with student loans are funded through mandatory appropriations and because the grant programs and other Federal student aid operations costs have continued to receive annual discretionary appropriations.

In the 116th Congress, Senators on the HELP Committee did not come together on a comprehensive bipartisan HEA reauthorization bill. Republicans and Democrats on the HELP Committee did, however, engage in negotiations on a comprehensive HEA bill, but ultimately negotiations stalled, and the onset of COVID-19 forced the Committee to focus on the series of pandemic relief bills that moved through Congress this year. We also note that neither Senator Alexander nor Senator Murray have released their own, partisan, comprehensive HEA reauthorization bill. Senator Alexander did, however, introduce a series of smaller HEA packages, in hopes of passing some of the provisions that have bipartisan agreement.

In the 116th Congress, the House Education and Labor Committee introduced and marked up the College Affordability Act (CAA). The Committee voted on party lines, 28-22, to send the CAA to the full House floor. The CAA has not been considered on the House floor.

The House Education and Labor Committee Republicans introduced the High-Quality Opportunities in Postsecondary Education (HOPE) Act as a substitute in response to the CAA. The HOPE Act is very similar to the PROSPER Act, which Education and Workforce Republicans introduced and passed out of Committee in December 2017 when they had the majority in the House as their version of an HEA reauthorization bill.

In March 2017 Congress, under the authority of the CRA, rescinded the Obama Administration's regulations on the quality and reporting requirements of teacher education programs and on the administration of the Teacher Assistance for College and Higher Education (TEACH Grants). The Trump Administration has not re-regulated on teacher education program quality or reporting but did issue new regulations on TEACH Grants.

On July 1, 2019, ED repealed the Obama Administration's "gainful employment" regulation, which restricted HEA Title IV eligibility for programs at for-profit institutions and certificate programs at public and nonprofit institutions at which students had taken on a high level of debt, relative to projected earnings.

The following table displays this, and other postsecondary education regulatory and related activity carried out by the Administration.

ED - HEA Regulations and Program Memorandum	Status	Background Information
Borrower Defense to Repayment	<p>Notice of Proposed Rulemaking (NPRM) published July 31, 2018</p> <p>Final Regulations published September 23, 2019</p>	<p>NPRM</p> <p>Final Regulations</p>
Elimination of the Gainful Employment Rule	<p>NPRM published August 14, 2018</p> <p>Final Regulations published July 1, 2019</p>	<p>NPRM</p> <p>Final Regulations</p>
Recognition of Accrediting Agencies	<p>NPRM published June 12, 2019</p> <p>Final Regulations published November 1, 2019</p> <p>Memorandum on retroactive establishment of the date of accreditation issued July 25, 2018</p>	<p>NPRM</p> <p>Final Regulation</p> <p>Memorandum</p>
Eligibility of Faith-Based Entities, Implementation of TEACH Grants	<p>NPRM published December 11, 2019</p> <p>Final Regulations Published August 14, 2020</p>	<p>NPRM</p> <p>Final Regulations</p>
Protection of Religious Liberty and Free Inquiry	<p>NPRM published January 17, 2020</p> <p>Final Regulations published September 23, 2020</p>	<p>NPRM</p> <p>Final Regulations</p>
Distance Education	<p>NPRM published April 2, 2020</p> <p>Final Regulations published September 2, 2020</p>	<p>NPRM</p> <p>Final Regulations</p>
Recession and Replacement for the 2016 Handbook for Campus Safety and Security	<p>Posted October 9, 2020</p>	<p>Final Clery Act Appendix for</p>

Reporting		FSA Handbook
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Outlook for HEA

HEA reauthorization is long overdue and both the House and the Senate are likely to continue to focus and hold hearings on higher education issues. The House will likely consider the Democrat's CAA, but the likelihood of Senate HEA action is difficult to determine until we know who the Republican leader of the HELP Committee will be. If the Biden Administration chooses to prioritize HEA reauthorization, then its chances of getting done become higher, although there are still significant challenges to passing a comprehensive reauthorization. For example, there are many unresolved issues that require bipartisanship, such as funding, the role of for-profits, accountability issues, campus sexual assault policy, the proper use of data and loan servicing policy. GOP control of the Senate and Democratic control of the House will create many of the same challenges that exist in this present Congress should both chambers pass competing versions of an HEA reauthorization bill.

Even if Congress is unable to pass an HEA reauthorization bill, the Biden Administration will likely move forward on several higher education regulations and Executive Orders that do not require Congressional approval. Specifically, we expect the Biden Administration to engage in some amount of Federal student loan debt cancellation for current borrowers as part of its "First 100 Days" agenda. We also expect the Biden Administration to extend the current no loan payment/no interest/no collections period at least through the period of time it takes to provide loan cancelation to each borrower.

Workforce Development Programs of the Department of Labor (DOL)

WIOA supports workforce investment activities through statewide and local workforce systems that are intended to increase the employment, retention and earnings of participants and in doing so improve the quality of the workforce, reduce welfare dependency, and enhance national productivity and competitiveness. WIOA was enacted in 2014 as a replacement for the Workforce Investment Act and amended in 2015. During the Trump Administration, there was no significant legislative or regulatory action related to WIOA. The authorization for WIOA expired in FY2020.

Many provisions in Democrats' Relaunching America's Workforce Act (introduced on May 1, 2020), which would invest \$15 billion in workforce training in response to the COVID-19 pandemic, had bipartisan support, even though the bill was introduced only by Democrats. Similarly, the House Democrats recently introduced the National Apprenticeship Act of 2020, which also had many components with bipartisan support. A sticking point for the apprenticeship bill is the debate around DOL-registered apprenticeships (supported by Democrats) and Industry-Recognized Apprenticeship Programs (IRAPs) (supported by Republicans). Along the same lines, Senator Steve Daines (R-MO) introduced the Workforce Recovery and Training Services Act on July 21, 2020, which would authorize \$3.5 billion to increase access to

employment and training services by expanding online learning, assisting with the purchase of technology, supplies and training at the local level.

Under the authority of the National Apprenticeship Act, DOL issued regulations for the recognition of third-party entities that evaluate and recognize IRAPs.

The following table displays DOL’s regulatory activities and selected guidance documents issued over the last four years. Access to the complete array of “advisories and directives” issued by DOL’s Employment and Training Administration is available [here](#).

DOL - Regulations	Status	Background Information
Industry-Recognized Apprenticeship Programs (IRAPs)	NPRM published June 25, 2019 Final Regulations published March 11, 2020	NPRM Final Regulations
DOL - Guidance	Status	Background Information
WIOA Title I Youth Program	Guidance issued March 2, 2017	Guidance
WIOA Performance Accountability	Updated guidance issued August 23, 2017	Updated Guidance
WIOA Annual Statewide Performance Report	Guidance issued November 7, 2018	Guidance
Validating WIOA Performance Data	Guidance issued December 19, 2019	Guidance
WIOA Title I and Wagner-Peyser Waivers	Guidance issued December 19, 2018	Guidance
Aligning Performance Accountability Reporting, Definitions and Policies Across Workforce Programs	Guidance issued March 25, 2019	Guidance
Negotiations and Sanctions for WIOA Core Programs	Guidance issued February 6, 2020	Guidance
Understanding Postsecondary Credentials in the Public Workforce System	Guidance issued June 8, 2020	Guidance
Validating Required Performance Data	Guidance issued June 18, 2020	Guidance

Outlook for Workforce Development Programs of the Department of Labor

Up to this point, including during negotiations on various COVID-19 relief bills, workforce development has not received a great deal of attention from leadership, even in a time of record unemployment and workforce upheaval. However, when the shift in relief bills turns to “recovery”, this could change and there is more likely to be an increased focus on workforce programs. In fact, Chairman Scott is likely to continue to pursue legislation introduced earlier this year to inject \$15 billion into workforce programs to address the economic impact of COVID-19. Companion legislation was introduced in the Senate by Senator Murray, Ranking Member of the HELP Committee.

Beyond COVID funding, we do expect House Democrats to begin a WIOA reauthorization effort potentially working with House Republicans, including Ranking Member Foxx, who also remains interested in this issue. In the Senate, workforce training (and other the priorities of the GOP-controlled HELP Committee), remain unclear until a Chairman is selected. These factors may make it difficult to push a WIOA reauthorization across the finish line during the 117th Congress. However, areas of potential agreement for a WIOA reauthorization include expanding the proportion of funds supporting training versus other activities; addressing issues related to eligible training providers; and an increased focus on ways to ensure training is relevant to skills most in demand.

It is unclear to what extent the Biden Administration will prioritize workforce issues, but it is likely to be on their radar screen particularly as part of a broader economic recovery effort. In addition, it’s noteworthy that when she was in the Senate, Vice-President-elect Harris was engaged in these issues and introduced legislation focused on upskilling, including by proposing new Technical Learning Accounts for unemployed and underemployed individuals.

Building upon efforts of the past year, we also expect a renewed push to pass the House Democratic apprenticeship bill next Congress. With the departure of the Trump Administration and the likely reversal of its IRAP regulations, we predict it may be easier to find at least some bipartisan support for an apprenticeship bill in the House, which may help push the Senate HELP Committee to consider similar legislation.

Career and Technical (CTE) Education and Adult Education

Congress reauthorized the Carl D. Perkins Career and Technical Education Act during the 115th Congress. The Strengthening Career and Technical Education for the 21st Century Act (Perkins V) included some important policy advances, such as improving collaboration between industry and State and local CTE programs; improving the alignment of CTE programs with State and locally identified in-demand, high-growth, and high-wage career fields based on labor market data; and the authorization of a new innovation grant program.

This reauthorization has been the single biggest education action brought to completion by Congress over the past four years of the Trump Administration. ED continued its practice of recent decades (with regard to CTE) by not issuing regulations for the new statute. Rather, the Department released a guide for submission of State plans for the reauthorized statute.

The Office of Career, Technical and Adult Education (OCTAE), which administers the CTE program, also oversees the Adult Education and Literacy Act (AEFLA), one of the core components of WIOA. Over the last four-year period, OCTAE issued a number of AEFLA guidance documents.

The following chart presents significant guidance packages issued by OCTAE during the Trump Administration (in addition to the COVID-related guidance referenced on page 53).

ED – CTE and Adult Education Guidance	Status	Background Information
Submission of Perkins V State Plans	Revised Guide released September 12, 2019	Revised Guide
Submission of WIOA Annual Performance Reports	Program Memorandum released September 12, 2017	Program Memorandum
Two-Year Modification Requirements for WIOA State Plans	Program Memorandum released January 19, 2018	Program Memorandum
WIOA Levels of Performance	Program Memorandum released February 23, 2018	Program Memorandum
Validating Jointly Required WIOA Performance Data	Program Memorandum released December 19, 2018	Program Memorandum
Use of AEFLA Funds for Integrated Education and Training Programs	Program Memorandum released August 15, 2019	Program Memorandum

Outlook for CTE and Adult Education

Both CTE and Adult Education are bipartisan concerns that will likely continue to be important, especially given the focus on jobs and employment in the near term, but we are not expecting any major changes to occur in this upcoming Congress, especially since the CTE law was recently reauthorized. We do expect the Administration will try and highlight some innovative practices using the innovation authority in the CTE law that was established in the Perkins V reauthorization. This authority provides ED with the ability to issue competitive grants for innovative activities and practices.

Child Care and Early Childhood Education

Neither the Head Start Act nor the Child Care and Development Block Grant Act (up for reauthorization in FY2020) has been reauthorized during the four years of the Trump

Administration; nor did Congress enact other early childhood legislation. During that time, the Department of Health and Human Services (HHS) issued a limited number of guidance documents, including, in 2020, guidance on COVID-19 related issues. Guidance documents (called “information memoranda”) on Head Start may be accessed [here](#). The Child Care Development Fund (CCDF) and other childcare-related information memoranda are available [here](#).

Head Start Act: Congress last reauthorized the Head Start Act in 2007, extending its authorization through 2012. We know that child care and early childhood education are big priorities for Senator Murray, but movement on this issue will depend on the Senate HELP Committee Chair. We know Senator Burr has been interested in child care issues in the past, though not necessarily Head Start.

Child Care for Working Families Act: In the 115th Congress, Ranking Member Murray of the Senate HELP Committee and Chairman Scott of the House Education and Labor Committee introduced the Child Care for Working Families Act to limit child care costs for families with incomes under 150 percent of State median income to 7 percent of their income. The bill would also create a new State-based preschool program and provide resources for compensation and training for the child care workforce. The bill was reintroduced in the 116th Congress.

COVID-19 Child Care bills: Several COVID-19 related bills were introduced to respond to the impact of COVID-19 on child care providers and the parents who rely on these services. These bills, introduced by Republicans and Democrats, would provide support to providers whose operations were impacted by COVID-19 and provide support to families who were struggling to pay for or access childcare services due to COVID-19. The House passed several of these bills, but they were not taken up by the Senate. Both the House Democrats and Senate GOP larger COVID-19 bills, however, have provided funds to address child care needs.

The following table displays selected Head Start and CCDBG guidance released over the past four years.

HHS - Head Start Guidance	Status	Background Information
Head Start Facilities	Information Memorandum issued June 28, 2017	Information Memorandum
Inclusion of Children with Disabilities	Information Memorandum issued January 22, 2020	Information Memorandum
COVID-19 Fiscal Flexibilities	Information Memorandum issued May 21, 2020	Information Memorandum
HHS - CCDBG Guidance	Status	Background Information
CCDF Policy Opportunities for Supporting Populations Impacted by Opioid Abuse and Substance Use Disorders	Information Memorandum issued June 5, 2019	Information Memorandum
CCDF and COVID-19	FAQs issued March 13, 2020	FAQs

CARES Act CCDF Funds	Information Memorandum issued April 29, 2020	Information Memorandum
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Outlook for Child Care and Early Childhood Education Programs

An interested Biden Administration – combined with bipartisan interest in Congress, along with the current pandemic – could create momentum for movement on childcare. Outside of immediate COVID-19-related assistance, agreement on both policy specifics and overall funding levels is likely to be more of a challenge. We do expect bipartisan support for significant childcare assistance for providers and families as part of any COVID-19 package moved in Congress in the early days of the Administration or possibly in the lame-duck period. Whether a Head Start reauthorization is passed during the next Congress will largely depend on the priorities of the Biden Administration and House and Senate leadership. Senator Burr, for example, has been very active on CCDBG in the past and may want to examine it again should he become Chair of the HELP Committee, and we know childcare issues are a top priority for Senator Murray.

Individuals with Disabilities Education Act (IDEA)

IDEA is the Federal law that provides funding to States to help ensure that children with disabilities receive a free appropriate public education. IDEA guarantees this through due-process and procedural protections. The IDEA authorization expired in FY2010, but IDEA Part B, the main part of IDEA that authorizes grants to States, is permanently authorized.

There were a number of bills introduced in the 116th Congress, in both the House and the Senate, to amend IDEA, with more bills authored by Democrats.

On July 3, 2018, ED issued a final rule delaying for two years the deadline for States to comply with the regulations on significant disproportionality in the identification of children for special education under IDEA. The regulation thus went into effect on July 1, 2020. The Obama Administration had issued that regulation on December 19, 2016.

ED's Office of Special Education Programs (OSEP) also issued several IDEA-related guidance documents, in addition to those specifically related to the COVID-19 pandemic (shown on page 53), as displayed in the table below.

ED – IDEA Regulation	Status	Background Information
Delay of the Regulation on Significant Disproportionality in Identification of Children for Special Education	Final Rule published on July 3, 2018	Final Rule
ED – IDEA Guidance	Status	Background Information

Significant Disproportionality Regulation	Questions and Answers released March 2017	Questions and Answers
Eligibility Requirements for Children Suspected of Having a Visual Impairment	Guidance released May 22, 2017	Guidance
<i>Endrew F. v. Douglas County School District</i> Supreme Court Decision	Questions and Answers released December 7, 2017	Questions and Answers
Increasing Postsecondary Opportunities and Success for Students and Youth with Disabilities	Guidance released September 17, 2019	Guidance

Outlook for IDEA

President-elect Biden’s campaign called for full Federal funding of special education, along with other measures to better support students with disabilities, including special education teacher recruitment, training and funding to support existing IDEA parent centers, and expanded programs for young children with disabilities. We expect Congress to hold some hearings on IDEA, but major efforts to reauthorize or update IDEA are less likely to happen, as they don’t seem to be top priority of the relevant Committees.

Education Sciences Reform Act (ESRA)

ESRA authorizes the principal education research, statistics, and evaluation activities of ED through the Institute of Education Sciences (IES). In 2002, ESRA was enacted with two companion measures; (1) Educational Technical Assistance Act to authorize ED’s Comprehensive Centers and the Statewide Longitudinal Data Systems program; and (2) National Assessment of Educational Progress Authorization to authorize the National Assessment of Educational Progress (NAEP, or “the Nation’s Report Card”) and the associated National Assessment Governing Board. On May 8, 2014, in the 113th Congress, the House passed H.R. 4366, the Strengthening Education Through Research Act (SETRA) to reauthorize all three laws by a voice vote. This bill did not get taken up in the Senate before the end of the 113th Congress.

The following Congress, on December 17, 2015, the Senate passed an almost identical ESRA reauthorization bill with the same name (S. 227) by unanimous consent. This bill did not get taken up in the House before the end of the 114th Congress. Since the 115th Congress, where the House held two hearings on the topic of ESRA, there has not been much movement on or interest in the issue. No action was taken on ESRA in the 116th Congress.

Outlook for ESRA

While ESRA has never been a top priority for the authorizing committees, it is possible that the upcoming Congress will want to complete ESRA’s reauthorization because it could offer a

relatively easy and bipartisan win early on in the new Congress. SETRA has already passed both chambers, so it would likely be a fairly straightforward bill to bring up, make changes to and move through Congress. There is also a possibility ESRA could move in the lame-duck Congress, but we think this scenario is less likely given other competing education priorities like Senator Alexander's FAFSA Simplification Act.

Rebuild America's Schools Act

The Rebuild America's Schools Act would authorize \$70 billion in grants and facilitate \$30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. It was included in the larger House Democratic infrastructure bill, the Moving Forward Act (H.R. 2), which passed the House in the 116th Congress.

Outlook for the Rebuild America's Schools Act

We expect infrastructure will be a priority issue for Democrats and some Republicans. We also foresee House Democrats trying to move the Moving Forward Act again, which would include the Rebuild America's Schools Act. The success of a larger infrastructure package is hard to predict – these bills are challenging to pass because they contain provisions that are extremely local to members (roads, bridges, etc.) - but we do expect discussion and some action on the topic. Furthermore, school construction funding, in particular, is a very partisan issue, and no bill to provide this funding has passed since 2000. In 2009, key Republicans demanded school construction funding be removed from the economic recovery bill in order to secure their votes for its passage, and they were successful in doing so. Republicans are usually very wary of voting for Federal school construction funding, so it's unclear whether, if there's an infrastructure bill, school construction would be included.

The Child Abuse Prevention and Treatment Act (CAPTA)

CAPTA is the key Federal legislation addressing child abuse and neglect. It provides Federal funding to States in support of prevention, assessment, investigation, prosecution and treatment activities. It also provides grants to public agencies and non-profit organizations (Community-Based Grants for the Prevention of Child Abuse and Neglect), including Indian Tribes and Tribal organizations, for demonstration programs and projects.

CAPTA was reauthorized by the CAPTA Reauthorization Act of 2010, which amended both Titles I and II. CAPTA was most recently amended by the Comprehensive Addiction and Recovery Act of 2016, which modified the CAPTA State plan requirement for infants born and identified as being affected by substance abuse, withdrawal symptoms or Fetal Alcohol Spectrum Disorder by adding criteria to State plans to ensure the safety and well-being of infants following their release from the care of health-care providers.

In May 2019, the House passed the bipartisan Stronger Child Abuse Prevention and Treatment Act to reauthorize CAPTA and the Adoption Opportunities Act (AOA). A version of this bill was also included in the updated HEROES Act, released by House Democrats in response to the COVID-19 pandemic. The bill would increase authorization levels, focus on prevention and best practices, and provide for uniform practices for tracking and reporting of childhood fatalities resulting from maltreatment.

Separately, in December 2019, the Senate HELP Committee passed a package of bills: the CAPTA Reauthorization Act of 2019 (S.2971) to reauthorize CAPTA; the Adoption Opportunities Reauthorization Act of 2019 (S.2969) to reauthorize the AOA; and a reauthorization of the Family Violence Prevention and Services Act (FVPSA). Since passage of the House and Senate CAPTA reauthorization bills, staff have been trying to negotiate a compromise package to reauthorize CAPTA and the AOA. Senate staff would like to include FVPSA in any final deal, but so far, the House has been unwilling to include it.

Outlook for CAPTA

It is possible bicameral, bipartisan staff can come to an agreement and pass a CAPTA package (which includes the AOA) in a lame-duck Congress. Staff have been making good progress on developing a compromise package. If the bill does not pass in lame duck, CAPTA is a good candidate to move earlier in a new Congress to give new leadership an early bipartisan win.

Child Nutrition

The 116th Congress saw a number of bills introduced in both the House and the Senate addressing child nutrition issues. There was a major focus on child nutrition due to the coronavirus pandemic, specifically on continuing to provide low-income students free or reduced price school breakfast and lunch even amidst school closures. The Pandemic Electronic Benefits Transfer (P-EBT) program was also adopted to allow students to purchase food at grocery and other stores, similar to how the Supplemental Nutrition Assistance Program (SNAP) operates. One major factor in negotiations in the current CR was several child nutrition provisions. The CR extended and expanded the P-EBT program and provided greater flexibility for schools in providing school meals through the 2020-2021 school year.

Outlook for Child Nutrition

We expect there to continue to be a focus on child nutrition, specifically when it comes to any future COVID-19 relief packages.

Criminal Justice Reform

The Black Lives Matter movement interjected an increased focus on criminal justice reform into the 116th Congress. Both Democrats and the Republicans have introduced their own legislation to address racial injustices, including the JUSTICE Act (S. 3985) on the Senate side and the George Floyd Justice in Policing Act of 2020 (H.R. 7120), which passed in the House.

Outlook for Criminal Justice Reform

Democrats and Republicans have been split on this issue and continue to remain divided. We expect a continued push from House Democrats on these issues, but little action (if any) by the GOP-controlled Senate.

Museum and Library Services Act (MLSA)

MLSA is the Federal law that established the Institute of Museum and Library Services and authorizes State formula grants through the Library Services and Technology Act and an array of national competitive grants that support museums and libraries across the country.

The Museum and Library Services Act of 2018 became law on December 31, 2018. The law reauthorized MLSA and provided funding for library services and technology through FY2025.

Legislation was introduced to amend MLSA in the 116th Congress, including the Public Library Innovation Space Act (H.R.5967), which was introduced by Representative Ben Ray Lujan (D-NM). This bill would create competitive grants to establish “makerspaces” at public libraries. A makerspace is a facility that provides individuals access to technology resources to create physical goods and different educational resources for early-stage business ventures.

The Library Stabilization Fund (H.R. 7486 and S. 4181), introduced in both the House and the Senate, would allocate more money to libraries during the coronavirus pandemic.

Outlook for MLSA

MLSA continues to have bipartisan support. However, given that MLSA was just reauthorized, we do not expect it to be a focus of the new Congress and Administration. There may be funds provided to libraries in a COVID-19 package, but we do not expect any other action.

The Older Americans Act (OAA)

OAA funds critical services that help older adults stay healthy and independent – services like meals, job training, senior centers, caregiver support, transportation, health promotion and benefits enrollment.

In the 116th Congress, the Supporting Older Americans Act of 2020 was signed into law by President Trump on March 25, 2020. The law established, reauthorized and revised several of the programs relating to care for the elderly. In addition to revising programs for caregivers of the elderly, nutritional services and disease prevention, the bill established several programs to further support elder care, such as those that promote independent living and reduce social isolation. The new law reauthorizes the OAA through FY2024.

Outlook for OAA

There may be some oversight action on OAA activities, as it has bipartisan support; however, we do not expect it to be a priority for the new Administration. Additionally, the law was just reauthorized, so it is unlikely to be taken up again for some time.

OTHER POLICY ISSUES

Computer Science

The 116th Congress introduced various pieces of legislation to train teachers in computer science and to expand different educational activities. For example, the Computer Science for All Act of 2019 (H.R. 1485) would provide grants to SEAs, LEAs and tribes to expand training to teachers, increased access to science, technology, engineering and mathematics (STEM) classes and reduced course equity gaps. The Teacher Education for Computer Science Act (H.R. 3808 and S. 3040) would amend the HEA to make computer science education programs eligible for different teacher preparation grants and graduate fellowships.

The Trump Administration, along with appropriators, prioritized computer science in various discretionary grant programs across Federal agencies, particularly at ED, resulting in significant additional resources going toward computer science over the last several years.

Outlook for Computer Science

Computer science, along with STEM, will likely continue to be a topic discussed among Members of Congress. Congressional champions for computer science will continue to push for funding on the topic and will likely continue to be successful in ensuring its inclusion as a priority in various competitive grant programs. It is unlikely, however, that a new computer science funding stream will emerge through appropriations. The Biden Administration will likely be supportive of computer science, but may not prioritize it ahead of other issues, like social and emotional learning. In any event, computer science will likely be a bipartisan topic of discussion in education but will likely not be a top priority of either party.

Student Privacy

In 2015, the House Education and Workforce Committee introduced the bipartisan Student Privacy Protection Act (H.R. 3157) to amend the Family Educational Rights and Privacy Act (FERPA). The bill would have expanded the definition of a student “educational record” that is protected by law, placed new obligations on both educational institutions and third parties who handle that information and banned the use of such information for direct advertising to students. It would also have allowed for fines of up to \$1.5 million on educational institutions that violate the law. The bill never saw any Committee action. In 2015, there were also other bills introduced to amend and reauthorize FERPA.

Since 2015, there have been no comprehensive Committee efforts to reauthorize FERPA in the House or the Senate. The House Energy and Commerce Committee and Senate Commerce Committee have introduced and tried to move bills to place requirements on educational vendors and service providers regarding how they handle and use student data, but none of these bills has advanced.

Outlook for Student Privacy

Beyond student privacy, consumer privacy is a topic that will continue to receive a lot of attention. There will likely be efforts to move legislation protecting consumer data as well as actions by the Biden Administration to regulate this issue. The Biden campaign has stated that the Administration will create a ban on the storing, sharing and sale of student data by for-profit companies. If a large consumer data privacy bill moves, it is possible that FERPA reauthorization could move with it.

Outside of a larger bill, FERPA is unlikely to be a top priority for the Biden Administration and Congress. Perhaps it could receive some attention if there is a large data breach or other qualifying event. The new administration might also consider amending the FERPA regulations, but it will likely not be a top priority.

Civil Rights and Related Issues

On May 19, 2020 ED’s Office for Civil Rights (OCR) published final regulations for Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex, including sexual harassment, in education programs that receive Federal financial assistance. The new

regulations (which followed a November 19, 2018 Notice of Proposed Rulemaking) replaced temporary guidance issued by the Department in 2017, which in turn replaced Obama-era guidance on Title IX. The final regulation took effect on August 14, 2020.

The Trump Administration has taken other actions to alter the civil-rights-related policies of the Obama Administration. In February 22, 2017 OCR (along with the Department of Justice (DOJ)) withdrew Obama Administration policies on access to sex-segregated facilities based on gender identity (the so-called transgender bathroom guidance). In July 2018, OCR and DOJ rescinded Obama guidance on the use of race in elementary, secondary and postsecondary schools. And in December 2018, OCR and DOJ rescinded the Obama Administration’s 2014 school discipline guidance, which was intended to reduce racial disparities in school discipline. The withdrawal of that guidance was a recommendation of President Trump’s Federal Commission on School Safety.

The Administration has also adopted civil rights-related policies through a memorandum and Executive Orders. On September 4, 2020, the Director of the Office of Management and Budget (OMB), in a memo to Executive Branch offices and agencies, directed them to cease and desist from funding “divisive, Anti-American training sessions,” including those related to “critical race theory” or “white privilege,” or the concept that the United States is an inherently racist or evil country or that any race or ethnicity is inherently racist or evil. OMB directed the agencies to identify contracts for such training, as well as avenues for canceling those contracts.

On June 22, 2020 President Trump signed an Executive Order prohibiting Federal agencies from offering staff training that inculcates employees in race or sex stereotyping or race or sex scapegoating, as defined in the Order. The Order also instructs Federal agencies to review their grant programs and identify programs under which they might require, as a condition of receiving a grant, that grantees not promote such stereotyping or scapegoating.

Most recently, on November 2 President Trump issued an Executive Order establishing an “Advisory 1776 Commission” to “better enable a rising generation to understand the history and principles of the founding of the United States in 1776 and to strive to form a more perfect Union.”

The following table displays the civil rights-related regulations, guidance and other actions taken by the Trump Administration.

ED - Regulations	Status	Background Information
Title IX	Interim Guidance released September 2017 NPRM published November 29, 2018 Final Regulations published May 19, 2020	Interim Guidance NPRM Final Regulations ED Overview of the Final Regulations Questions and Answers

ED - Guidance	Status	Background Information
Transgender Access to Sex-Segregated Facilities	Dear Colleague letter rescinding guidance issued on February 22, 2017	Letter
School Discipline	Dear Colleague letter rescinding guidance issued on December 21, 2018	Letter
The Use of Race in K-12 and Postsecondary Education	Dear Colleague letter rescinding guidance issued on July 3, 2018	Letter
CTE Methods of Administration	OCR and OCTAE issued Program Memorandum on February 6, 2020	Program Memorandum
Memorandum and Executive Order	Status	Background Information
Anti-American Training	OMB Memorandum issued on September 4, 2020	OMB Memorandum
Racial and Sex Stereotyping and Scapegoating	Executive Order signed June 22, 2020	Executive Order

Outlook on Civil Rights and Related Issues

We expect the Biden Administration to take action on civil rights related issues by re-examining the Title IX regulations issued by the current Administration and rescinding the recent Executive Orders establishing an Advisory 1776 Commission and eliminating diversity training by employers. Additionally, the President-elect has been vocal in stating that he will restore the Dear Colleague on transgender students.

Implementation of the CARES Act and of Existing ED Programs During the COVID-19 Pandemic

On March 27, 2020 President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided funding to assist States, local educational agencies (LEAs) and institutions of higher education in responding to the COVID-19 pandemic and authorized waivers of certain ESEA requirements. ED has issued guidance on the various elements of the CARES Act, as well as on how ongoing Department programs were to be implemented during the pandemic.

The Department also promulgated an Interim Final Rule (IFR) on determination of the share of funds (under the CARES Act Elementary and Secondary Emergency Relief (ESSER) Fund and Governors Emergency Education Relief (GEER) Fund) that must be reserved for provision of equitable services to students and teachers in private schools. However, the IFR was rendered void nationwide by a decision of the U.S. District Court for the District of Columbia. The Department also promulgated an IFR restricting CARES Act funding to students that are eligible

for Federal student aid under Title IV of the Higher Education Act (thereby restricting undocumented students from receiving such aid). This IFR has been enjoined by several Federal District Courts and its enforcement is on hold in certain States.

It is likely that an incoming Biden Administration will carefully examine the guidance and regulations put forth by the Trump Administration and rescind or reissue any matters it finds problematic, including restrictions on funding emergency student aid grants to undocumented students.

The following table displays the regulations and significant guidance packages issued by ED related to the CARES Act and the COVID-19 pandemic.

ED – CARES Act Regulation	Status	Background Information
Equitable Services for Private School Students and Teachers	IFR published July 1, 2020 ¹	IFR
Eligibility of Students at Institutions of Higher Education for Funds under the CARES Act	IFR Published on June 17, 2020 ²	IFR
ED – CARES Act Guidance	Status	Background Information
Elementary and Secondary Emergency Relief (ESSER) Fund	FAQs released	FAQs
Governors Emergency Education Relief (GEER) Fund	FAQs released	FAQs
Maintenance-of-Effort Requirements (applicable to ESSER and GEER)	FAQs released June 5, 2020	FAQs

¹ Rendered void by a decision of the US District Court for the District of Columbia.

² Rendered void by a decision of the US District Court for the District of Columbia.

Equitable Services to Students and Teachers in Non-Public Schools (applicable to ESSER and GEER)	Updated FAQs released June 25, 2020 ³	FAQs
Higher Education Emergency Relief (HEER) Fund Emergency Financial Aid Grants to Students	FAQs released April 9, 2020 FAQs released May 15, 2020	FAQs FAQs
HEER Institutional Portion	FAQs released April 9, 2020 Supplemental FAQs released June 30 and revised September 8, 2020	FAQs Supplemental FAQs
ED – OTHER COVID-RELATED GUIDANCE	STATUS	BACKGROUND INFORMATION
Impact of COVID-19 on ESEA Assessments and Accountability	Fact Sheet released March 12, 2020	Fact Sheet
Providing Services to English Learners during the Outbreak	Fact Sheet released May 18, 2020	Fact Sheet
Addressing the Risk of COVID-19 While Serving Migratory Children	Fact Sheet released on May 11, 2020	Fact Sheet
Providing Services to Children with Disabilities during the Outbreak	Questions and Answers released March 12, 2020 Supplemental Fact Sheet released March 21, 2020	Questions and Answers Supplemental Fact Sheet
IDEA Part B Procedural Safeguards in the COVID-19 Environment	Guidance released June 30, 2020	Guidance

³ A certain number of these FAQs (those relating to the portion of funds that must be used to serve private school students and teachers) are no longer in effect because of the US District Court’s decision on the Interim Final Rule.

IDEA Part B Uses of Funds in the COVID-19 Environment	Guidance released June 25, 2020	Guidance
IDEA Part B Dispute Resolution in the COVID-19 Environment	Guidance released June 22, 2020	Guidance
Flexibility in Implementation of IDEA Part B Fiscal Requirements	Guidance released June 26, 2020	Guidance
Implementation of IDEA Part B Provision of Services in the COVID-19 Environment	Guidance released September 28, 2020	Guidance
Career and Technical Education State Plans	FAQs released on March 31 and April 10, 2020	FAQs Part 1 FAQs Part 2
Adult Education	FAQs released March 27, April 17, and May 29, 2020	FAQs Part 1 FAQs Part 2 FAQs Part 3
HEA Title IV and COVID	Guidance most recently updated October 15, 2020	Guidance
Meeting Civil Rights Requirements in the COVID-19 Environment	OCR Fact Sheet released March 16, 2020 OCR Questions and Answers released May 12, 2020 OCR Questions and Answers released September 28, 2020	Fact Sheet Questions and Answers Questions and Answers