



JANUARY 2018 PUBLIC POLICY UPDATE

CONGRESS

The House is in session: January 8- 11, 16-19, and 29-31.

The Senate is 'tentatively' in session throughout January, with the exception of January 3 and January 15.

House Committee on Education and Workforce—No Hearings Scheduled

The December 20, 2017, hearing “Examining the Policies and Priorities of the U.S. Department of Education” with U.S. Department of Education Secretary Betsy DeVos was postponed. A new date for the hearing has not been scheduled to date.

Senate HELP Committee—No Issue-Related Hearing Scheduled

Senate HELP Committee confirmation hearing of Kenneth Marcus for Assistant Secretary for the Office of Civil Rights with the U.S. Department of Education is scheduled for Thursday, January 11, 2018.

Key Issues Congress Faces in January

(Courtesy of Roll Call)

Budget Caps

More than three months into fiscal 2018, Congress is still hoping to pass an omnibus spending bill and end the run of stopgap measures it passed in 2017 to keep the government open. The current continuing resolution expires January 19, and the key to getting an omnibus bill instead of another CR is negotiating an [elusive deal to raise the sequestration budget caps](#).

Speaker Paul D. Ryan will host a meeting this Wednesday with Senate Majority Leader Mitch McConnell, Senate Minority Leader Charles E. Schumer, House Minority Leader Nancy Pelosi, Office of Management and Budget Director Mick Mulvaney and White House Legislative Affairs Director Marc Short to discuss the budget caps and other pressing legislative matters.

Democrats have continued to call for “parity” in raising the caps, which they’ve defined as a dollar-for-dollar increase in defense and nondefense spending, but Republicans are seeking more for defense. A deal would need to be struck this week for appropriators to have enough time to draft an omnibus before the Jan. 19 deadline, although a short stopgap would likely still be needed.

President Donald Trump wants to strike a two-year deal on spending caps that will allow the government to meet the Pentagon’s needs, White House Press Secretary Sarah Huckabee Sanders said Tuesday. She did not mention a specific funding level for national defense for fiscal years 2018 and 2019, however.

DACA

If Democrats are going to give up any ground on the budget caps, it would likely be to extract concessions from Republicans on a legislative replacement for the Deferred Action for Childhood Arrivals program that shelters immigrants brought to the country illegally as children from deportation. Democrats had hoped to address the matter, a top priority for the party, before the end of 2017 but agreed to push the fight off until January rather than force a government shutdown. Still, many Democrats voted against the CR last month in objection to inaction on DACA and other priorities.

Republican leaders do not see things so urgently, given that the program will remain partly in operation until March. However, McConnell has said that if senators and administration officials who have been negotiating on DACA, border security and overhauling parts of the immigration system reach an agreement by the end of January, he will bring it to the Senate floor for a stand-alone vote.

Trump jumped into the negotiations via Twitter, potentially complicating matters. He [tweeted Friday that](#) “Democrats have been told, and fully understand” that a DACA fix cannot occur without his promised border wall and an end to the visa lottery system and so-called chain migration immigration policies that allow permanent residents to sponsor extended family members seeking to enter the United States.

He followed that up Tuesday with a [pointed criticism](#) of the minority party on the issue: “Democrats are doing nothing for DACA—just interested in politics. DACA activists and Hispanics will go hard against Dems, will start ‘falling in love’ with Republicans and their President! We are about RESULTS.”

Senate Majority Whip John Cornyn of Texas said Tuesday before departing his home state for Washington that he believes Congress will “get this done before the March deadline, and I hope the president does not extend it because that puts the pressure on us.”

“I think Congress tends to respond when it’s put under pressure,” he said.

Fitch Ratings: Tax Bill Could Squeeze School Districts, Colleges and Universities

(Courtesy of Caitlin Emma, Politico)

The GOP tax overhaul will squeeze school districts and pressure colleges and universities, Fitch Ratings said in a statement released on December 20, 2017.

The credit reporting agency said the cap on state and local tax deductions will hit residents in high-taxed states harder, and as a result, they “may have less tolerance for higher state and local taxes in the future.”

“Less revenue-raising flexibility could limit growth in state and local spending and have negative implications for entities that rely on government support including school districts, public higher education institutions and healthcare providers with high Medicaid exposure.”

Fitch Ratings also said that “the 1.4 percent excise tax on net income from the largest private colleges’ endowments would be an incremental financial stress but would likely not have significant near-term credit effects on Fitch-rated colleges or universities.”

Citing data from The Chronicle of Higher Education, the agency noted that the law’s direct impact is narrow—“fewer than 30 private colleges and universities meet the enrollment and endowment per student levels” to trigger the tax—but it could still have indirect effects.

“However, it could lower the incentives for donors to fund endowments and raise the possibility of higher and more onerous taxes on endowments in the future. The incentives for donors could also be pressured by the rise in the standard deduction if it lowers the number of taxpayers who itemize charitable deductions.”

House Committee Passes HEA Reauthorization Bill

(Courtesy of Kathryn Zekus, Advance CTE)

As Congress wraps up its final weeks in session before the 2017 winter recess, there has been a flurry of activity. Read below to find out more about the postsecondary education legislation that advanced out of the House Committee on Education and the Workforce, the next step in the appropriations process for Fiscal Year 2018 (FY18) and an update on the tax reform legislation moving through Congress.

Higher Education Act (HEA) Reauthorization Proposal Passes House Committee on Education and the Workforce

On December 1, Representative Virginia Foxx (R-NC), Chairwoman of the House Committee on Education and the Workforce, introduced H.R. 4508, the “Promoting Real Opportunity, Success and Prosperity Through Education Reform” (PROSPER) Act. This bill would reauthorize the Higher Education Act (HEA), which was last reauthorized in 2008, and would make significant changes to several provisions within the current law. The bill and related materials from the Committee can be found online [here](#). During the [markup](#), Committee members offered 63 [amendments](#) on a wide range of topics. Eighteen of these amendments were adopted, but the proposal’s architecture was largely maintained. The PROSPER Act passed out of Committee on a party line vote (23-17) and the bill is expected to go before the full U.S. House of Representatives for a vote in early 2018. It is likely that the U.S. Senate will unveil its own proposal in early 2018.

Congress Passes Short-Term Funding Measure

On December 7, Congress passed a short-term funding measure, known as a continuing resolution (CR), to keep the government open at the current funding levels, beyond December 8, when the previous CR was set to expire. The current CR expires on December 22, meaning Congress will likely need to pass another CR by this date to allow time for Congress to come to an agreement on budget caps for defense and non-defense discretionary (NDD) spending (which will provide appropriators with the top-line numbers they need to advance Fiscal Year 2018 appropriations bills).

House and Senate Tax Reform Bills Go to Conference Committee

In November, both the House and Senate passed tax reform bills. House and Senate leadership have named 29 Members of Congress to a conference committee to reconcile the differences between these bills. The conference committee is expected to come to an agreement on the legislation soon and it is likely that both chambers of Congress will vote on the legislation next week. Advance CTE had concerns about several provisions in each bill, including the elimination of: the deductions for state and local taxes (SALT), the educator expense deduction, student loan interest tax deductions, the lifetime learning credit and tax benefits for employer tuition reimbursement programs. In addition, the overall cost of tax reform is likely to put pressure on appropriators to cut spending in other areas going forward. This means there could be an adverse impact on education spending, including for Perkins Basic State Grants, which have remained relatively [flat funded](#) since 1991. To learn more about each of these concerns, check out this [blog post](#) from our partners at the Association for Career and Technical Education (ACTE). Advance CTE partnered with ACTE to send a [letter](#) to the conference committee expressing these concerns.

Administration

Concerns Mount Over K-12 Education Plans

(Courtesy of US News & World Report)

As states cement education plans for their schools under the federal K-12 law, the Department of Education is working furiously to assess them amid mounting concerns about states' commitment to following the law, their proposals to ensure historically disadvantaged students have access to quality education, and the department's capacity—and in some cases, lack of desire—to police it all.

The [Every Student Succeeds Act](#), or ESSA, gives states new flexibility to create accountability systems that suit their unique needs. Those plans must be vetted and cleared by the Department of Education before states begin implementing them soon.

The process has been somewhat tumultuous, triggering concern from across the education spectrum about how Education Secretary [Betsy DeVos](#) and department officials would review each submission.

So far, the department's feedback to states has [irked Republicans](#), whose goal is to ensure states have as much flexibility as possible when devising their education plans. At the same time, it's vexed Democrats, who argue [Obama-era regulations](#) informing state education officials of exactly how they are supposed to implement the new law [should not have been eliminated](#).

With the review process now ending, some are increasingly concerned about the substance of the plans and the department's approval process.

“Secretary DeVos and her department are blatantly violating the current K-12 law we updated two years ago—they won't follow the very statutory language this committee settled on,” Sen. Patty Murray, top Democrat on the Senate Health, Education, Labor and Pensions Committee, said in [opening remarks](#) during an unrelated hearing on higher education held Nov. 28.

Murray said she was particularly peeved by states ignoring a key part of the law requires them to identify three distinct categories of schools for improvement: the bottom 5 percent of schools, all schools where one subgroup of students is consistently underperforming, and schools where any subgroup is performing as poorly as the bottom 5 percent.

“But plans are being approved that violate this,” she said. “If the department is ignoring the agreement we made in the law and just choosing to implement whatever it feels like—which I believe they are in their approval of state plans so far—then this committee needs to hear from the secretary about how she intends to follow the laws that Congress agrees to.”

Those sentiments were echoed in a recent [review of the state plans from The Education Trust](#), a Washington-based civil rights education group, which found states are flouting their equity responsibilities with lackluster proposals that fail to identify and fix low-performing schools, specifically for schools that serve lots of low-income students, students of color and other historically disadvantaged groups.

“What we found is not encouraging,” researchers at the Education Trust wrote in the executive summary. “For all the lip-service given to the importance of equity in ESSA, too many state leaders have taken a pass on clearly naming and acting on schools' underperformance for traditionally underserved students.”

Their biggest critiques of the plans were twofold: that most states base their school ratings on the average academic achievement of all students, which researchers at Education Trust argue

can mask the underperformance for certain groups of students, like students of color, and that many states set a low bar for enforcing the improvement of certain groups of students in schools identified as lowest performing in the state.

One of the most [comprehensive reviews](#) comes from the Collaborative for Student Success and Bellwether Education Partners, which convened a large group of 45 peer reviewers from all education and philosophical bents. Those reviewers also took issue with many of the states' plans, finding that overall, the plans were “uncreative, unambitious, unclear or unfinished.”

“It’s possible that states may go back and bolster their plans over time, but it does not inspire confidence that states chose not to submit plans that advanced educational opportunities in bold and innovative ways for all students,” the reviewers wrote.

While DeVos has approved the education plans for 15 states and the District of Columbia, she’s held other states’ feet to the fire—though not as closely as Democrats, civil rights groups and other education policy wonks dedicated to accountability issues would like.

DeVos approved her home state of [Michigan’s education plan](#), for example, only after telling state education officials there that their original submission was missing major pieces, including a plan for how it expected low-performing schools to improve academically.

And for those states still awaiting approvals, department officials blasted off a litany of requests for more information and alterations in letters sent in late December to 31 states and Puerto Rico.

The department came back at [Maryland](#), for example, with a [long to-do list](#). Among other things, the plan lacked academic achievement goals for high school students, officials said, left out important details about how it plans to calculate academic growth as well as identify its lowest-performing schools, and provided no information on how it will address the unique needs of migratory children.

Officials slammed [California’s plan](#) for its lack of clarity around how it plans to improve low-performing schools and ensure high-quality teachers are working in schools with lots of low-income students, as well as for its new system for assessing the performance of schools, which is presented in a color-coded dashboard that includes so much information that many have deemed it confusing.

The Los Angeles Times’ editorial board praised the Education Department for its assessment of the state plan, [writing in an op-ed](#) last week, “The question isn’t so much why California’s school-improvement plan was sent back to the state for some major fixes, but why officials ever thought it had a chance of passing muster with the U.S. Department of Education.”

“This is more like a non-accountability system than a plan for producing a better-educated population,” the board wrote.

Some applications included obvious violations of the law. In [Florida](#), for example, where 1 in 10 students is still learning English, [the plan](#) doesn’t include those students’ language proficiency in its school grading system. [New Hampshire](#), meanwhile, [makes no mention](#) of a state law that prevents it from requiring school districts to administer an annual statewide exam in grades 3 through 8—even though that’s required under the federal law.

One of the most common gripes from the department: Each indicator that goes into a state's assessment of school performance—such as test scores or graduation rates—is required by law to be broken out by student subgroups so that parents can see, for example, how white

students perform compared to black students or Latino students, or how students with disabilities or those still learning English are performing compared to their peers.

“I’m glad the department is calling them on that and not letting them skirt it,” says Anne Hyslop, an education consultant who previously worked in the Education Department under the Obama administration as a senior education policy adviser. “Granted, this is just the initial volley back from the department to states. There will be continued back and forth and negotiation and you never know what they will ultimately demand for approval.”

Hyslop, who also served as one of the peer reviewers for the Bellwether and Collaborative review, recently penned an [analysis of the department’s approval process](#), titled, “Betsy DeVos and the Soft Bigotry of Low ESSA Expectations,” which takes the secretary to task for a “trust and don’t bother to verify attitude” that shows the Trump administration “simply doesn’t care” about compliance with the law.

With a federally mandated 120-day approval clock ticking, most states have until the end of Jan. 8 to revise and resubmit their plans, after which the Education Department will have a short window to re-review and either approve or deny those plans.

Hyslop says she’s “heartened” by the flurry of requests from the Education Department for more information, which were released just days after her analysis was published.

“But I’m also trying to be realistic that states may not fully change their systems and instead try to do the minimal amount required by law,” she says.

U.S. Department of Education ESSA Update

(Courtesy of the U.S. Department of Education)

The U.S. Department of Education has provided initial feedback to [33 states and Puerto Rico](#) that submitted *Every Student Succeeds Act* (ESSA) consolidated state plans in September. States received notes from external, independent peer reviewers, as well as specific information from Department staff about changes needed to ensure they are meeting the requirements under the statute. Providing feedback is an opportunity for the agency to work with states and offer technical assistance to help improve outcomes for students.

ESSA requires the Secretary to issue a written determination within 120 days of a state’s submission of its plan, unless the state requests additional time for its revisions.

Meanwhile, the Department issued a [Federal Register notice](#) inviting applications under ESSA’s Innovative Assessment Demonstration Authority. The Secretary may allow up to seven states—or groups of states, provided the total number of states approved is seven or fewer—to pilot new kinds of tests in a select number of school districts, with the goal of expanding them statewide. This authority may be appealing to states moving toward more project-based forms of assessments. The application package is available [here](#). States are encouraged to submit a notice of intent to apply by February 2; the deadline for applications is April 2. (Note: States interested in this authority but unable to implement an innovative assessment in the 2018-19 school year should contact Donald.Peasley@ed.gov about technical assistance in advance of future application opportunities.)

A New Betsy DeVos Proposal Would Make It Much Tougher for Students to Get Loan Forgiveness

(Courtesy of Molly Hensley-Clancy, BuzzFeed)

The Education Department is planning to propose new rules that would make it far more difficult for borrowers to obtain student loan forgiveness after being defrauded by their colleges, according to drafts circulated by the department and obtained by BuzzFeed News.

The department's plan would require individual students to prove that their college intentionally deceived them—something that sparked alarm among student advocates, who argue it would push loan forgiveness out of reach for the vast majority of borrowers.

The proposal is part of an effort by Education Secretary Betsy DeVos to rewrite the government's standards for loan forgiveness, called the "borrower defense" regulations. The proposed new rules would eventually erase regulations put into place by the Obama administration.

More than 80,000 claims for loan forgiveness are waiting for judgment by the department under the Obama-era rules. The vast majority were made by students at for-profit colleges, including tens of thousands who attended giant nationwide chains like Corinthian Colleges, ITT Tech and the Art Institutes, which collapsed during the Obama administration.

DeVos has characterized the Obama-era version of the standards as a government handout to students—giving "free money" to anyone who "raised their hand" to claim they'd been defrauded. For-profit colleges and historically black schools, among others, said the rules made it much too easy for students to claim fraud.

At the core of the Trump administration's proposal, according to the drafts, is a requirement that each student provide "clear and convincing" evidence that their college "acted with intent to deceive," or a "reckless disregard for the truth"—a far higher bar than the one set by the Obama administration, which asked only for a "preponderance of evidence" that a student had been deceived, and required no proof of a school's intent.

"It's hard to picture how any student would be able to meet such a high bar," said Clare McCann, who works on higher education policy at the left-leaning New America foundation and helped write the Obama administration's original standards.

Students "don't have access to the information and internal documents you would need" to prove colleges intentionally deceived them, McCann argued. "It's setting the standard so that it's virtually unusable for everyone."

The new version proposed by DeVos's department appears to also slice away paths for forgiveness now available to students, like the ability to claim a college had breached its contract or use a court judgment obtained by another student, and would cut in half the period that borrowers must file claims, from six years to three.

The proposals, which will soon be formally published by the department, are part of a lengthy process called "negotiated rulemaking" that is required of government agencies who are creating new regulations.

UPCOMING WEBINARS

Alliance for Excellence in Education: Making the Grade: Debating School Performance Ratings

January 11, 2018, 2:00 pm EST

When it comes to school accountability, education advocates tend to split into two camps. One camp believes that, just as students receive grades on their performance, schools should

receive a single summative rating—A–F letter grade or a score of 0–100—on a performance index. Doing so, they believe, provides parents and the public clear, transparent, and actionable information on a school’s performance and puts necessary pressure on the education system to drive improvement in its most underserved schools.

The other camp believes that school performance is too complex to be boiled down to a single figure, and worries that these summative ratings provide insufficient information to parents and stakeholders to inform continuous improvement in low-performing schools.

The Thomas B. Fordham Institute recently released *Rating the Ratings: An Analysis of the 51 ESSA Accountability Plans*. The report examines rating systems submitted by all fifty states and the District of Columbia, grading them on how clear their rating systems are, whether they incent a focus on all kids, and whether they weight growth along with performance for schools.

This webinar will present findings from *Rating the Ratings*, followed by a conversation on the merits and downfalls of summative ratings between ratings-proponent Michael Petrilli, president of the Thomas B. Fordham Institute, and ratings-skeptic Phillip Lovell, vice president of policy development and government relations at the Alliance for Excellent Education.

This will not be your typical panel where each participant agrees with the next. Get your popcorn ready and tune in on January 11 for a lively discussion. The panelists will be Phillip Lovell, Vice President of Policy Development and Government Relations, Alliance for Excellent Education and Michael J. Petrilli, President, Thomas B. Fordham Institute. Register [here](#).

Advance CTE Webinar: Leveraging ESSA's Momentum to Advance Career Readiness

January 17, 2018, 3 pm EST

ESSA marked a watershed moment for career readiness, with 49 states including at least one strategy in their ESSA plans to support career preparation in high school. Of those, 35 states included a measure of career readiness in their federal accountability systems. That said, many states left opportunities on the table, falling short of fully leveraging all that ESSA has to offer. The webinar will examine how states can leverage ESSA’s momentum to advance career readiness. The webinar will unpack the findings from Advance CTE and Education Strategy Group’s [full analysis of ESSA state plans](#) and explore trends across all states. Participants will also hear from two states leaders who are using their ESSA plans to build and capitalize on momentum around CTE and career readiness. Register [here](#).