

## EducationCounsel Alert for January 21, 2025

This EducationCounsel Alert shares updates about various recent actions by the federal government relevant to education, including:

- [1. Bipartisan Education Appropriations Bill Released](#)**
- [2. Supreme Court Hears Arguments in Cases Regarding Transgender Athletes](#)**
- [3. Negotiated Rulemaking Committee Reaches Consensus on Higher Education Accountability Regulations as a Result of the One Big Beautiful Bill Act \(OBBA\)](#)**
- [4. Other Significant Updates](#)**

All of our summaries and analysis of the Administration's executive actions are available in one place by [clicking here](#). Please note that these developments are sometimes changing rapidly, and *this Alert and all our materials are meant to provide general guidance and do not constitute specific legal advice.*

### **[1. Bipartisan Education Appropriations Bill Released](#)**

On 1/20/26, the House and Senate Appropriations Committees jointly released bipartisan [bill text](#) for FY26 appropriations for multiple agencies, including the FY26 Labor, Health and Human Services, Education, and Related Agencies (Labor/HHS) Appropriations bill. **The bill largely maintains funding for education programs at their current levels**, rejecting President Trump's requests for both a 15% cut to USED's budget and a consolidation of 18 K-12 programs into a block grant.

Congress also included a number of continuing and new provisions—as well as significant language in the accompanying [explanatory statement](#) (see pages 83-84)—that emphasize statutory limits on the Administration's ability to transfer USED's funds and functions to other agencies, as it has begun doing through a series of [interagency agreements](#) (see more details below the table)).

Although the Senate is out of session this week, the House is expected to vote on the “minibus” set of appropriations bills by the end of the week. Separate summaries of the final Labor/HHS bill were released by [House Appropriations Republicans](#), [House Appropriations Democrats](#), [Senate Appropriations Republicans](#), and [Senate Appropriations Democrats](#), each highlighting their priorities and messaging.

Below are key FY26 funding levels for USED and for early learning programs funded by HHS. A notes column includes relevant increases or decreases compared to the current funding levels\*, along with information about what was included in the [President's budget request](#) for FY26 (indicated where appropriate with the abbreviation “PBR”).

Topic Area	Select Programs	Current Funding Levels*	Bipartisan FY2026 Bill Levels	Notes (President's Budget Request = PBR)
USED	Overall funding levels for USED's budget	\$79 billion	\$78.8 billion	PBR: \$66.7B (15% cut)
K-12 Education	Title I	\$18.4 billion	\$18.4 billion	Increase of \$20M
	Title II (Supporting Effective Instruction State grants)	\$2.2 billion	\$2.2 billion	PBR: Eliminated (eg Title III & Migrant Ed.) and/or consolidated these programs into a block grant with a combined ~70% cut
	Title III (English Language Acquisition)	\$890 million	\$890 million	
	Title IV (Student Support & Academic Enrichment)	\$1.4 billion	\$1.4 billion	
	State Assessments	\$380 million	\$380 million	
	Education for Homeless Children and Youth	\$129 million	\$129 million	
	21st Century Community Learning Centers	\$1.3 billion	\$1.3 billion	
	Migrant Education (State Agency Programs)	\$376 million	\$376 million	
	IDEA Grants to States	\$14.2 billion	\$14.2 billion	Increase of \$20M
	Charter Schools	\$500 million	Up to \$500 million	Note: The bill provides \$440M but permits up to \$60M more via a transfer from a "nonrecurring expenses fund."
	Career & Technical Education State Grants	\$1.44 billion	\$1.44 billion	
Student Financial Assistance & Post-Secondary Education Programs	Pell Grants (maximum)	\$7,395	\$7,395	PBR: \$5,710 (23% cut)
	Federal Work-Study	\$1.2 billion	\$1.2 billion	PBR: \$250M (79% cut)
	Supplemental Educational Opportunity Grant	\$910 million	\$910 million	PBR: Eliminated
	Developing Hispanic-Serving Institutions	\$229 million	\$232 million	Increase of \$3M Note: USED shifted FY25 funds out of this program; the bill continues (and increases) funding for FY26.
	Postsecondary Student Success Grant (PSSG)	\$45 million	\$45 million	Note: The bill directs USED to spend these and other FIPSE funds on the "purposes and in the amounts" specified in the explanatory statement.
	Basic Needs for Postsecondary Students	\$10 million	\$10 million	
	TRIO Programs	\$1.19 billion	\$1.19 billion	PBR: Eliminated

Topic Area	Select Programs	Current Funding Levels*	Bipartisan FY2026 Bill Levels	Notes (President's Budget Request = PBR)
Other USED Programs	Office for Civil Rights	\$140 million	\$140 million	PBR: \$91M (35% cut)
	Institute for Education Sciences	\$793 million	\$790 million	Decrease of \$3M PBR: \$261M (67% cut)
	Education Innovation & Research	\$259 million	\$235 million	Decrease of \$24M PBR: Eliminated
	IDEA Part C (Grants for Infants and Toddlers)	\$540 million	\$540 million	
	Child Care Access Means Parents in Schools	\$75 million	\$75 million	PBR: Eliminated
Early Childhood Education (Funded by HHS)	Child Care & Development Block Grant (CCDBG)	\$8.7 billion	\$8.8 billion	Increase of \$85M
	Head Start	\$12.3 billion	\$12.4 billion	Increase of \$85M
	Preschool Development Grant Birth through Five (PDG B-5)	\$315 million	\$315 million	PBR: Eliminated
	Community Services Block Grant	\$804 million	\$810 million	Increase of \$6M

\* Note that current funding levels refers to the FY25 Continuing Resolution funding level or the FY24 (depending on the program), given that USED did not publish its final FY25 spending plans.

The bill and explanatory statement also address issues beyond funding levels, such as the following three:

**(i) Interagency Agreements:** The bill includes a number of provisions emphasizing statutory limits on the Administration's ability to dismantle USED by transferring its funds and functions to other agencies. These include continuing provisions from previous appropriations bills, such as Section 512 prohibiting the transfer of funds to other agencies, and new bill language, such as a provision that USED must "support staffing levels necessary to fulfill its statutory responsibilities including carrying out programs, projects, and activities...in a timely manner." The bill's explanatory statement also includes several passages that address USED's authority to move USED's functions, such as an opening note that "[e]ach Department and agency...shall not reallocate resources or reorganize activities except as provided herein." Congress also included a long passage regarding "Interagency Agreements and Program Transfers" in the explanatory statement that:

- "notes that no authorities exist for the Department of Education to transfer its fundamental responsibilities under numerous authorizing and appropriations laws, including through procuring services from other Federal agencies, of carrying out those programs, projects, and activities to other Federal agencies";
- lists several additional policy concerns with the recently announced interagency agreements (IAAs) such as a lack of capacity and expertise to carry out those programs, the creation of inefficiencies and additional burdens on fund recipients, and the ability to protect the rights of students; and
- directs USED to provide Congress with biweekly briefings on the implementation of the IAAs.

The bill does not include a provision in the Senate's earlier bill that would have specifically prohibited USED from transferring to another agency "significant responsibilities" related to carrying out Title I or IDEA. It also does not include a new explicit requirement for USED to undo its recent seven IAAs.

**(ii) Reduction-in-Force:** Although the current Continuing Resolution (CR) prohibits any reductions-in-force (RIF) of federal employees through 1/30/26, the bill does not include a similar provision. If the bill is enacted into law, USED (and other agencies) could theoretically proceed with RIFs unless prevented from doing so for another reason, such as the bill's language on staffing levels cited above or a relevant court order. (These could include RIFs initiated before or during the government shutdown, along with newly issued RIFs.)

**(iii) Timing of State Formula Grants:** The bill includes an explicit requirement that USED release state formula grant funding on time for FY26 (and for advance funding of FY27). This requirement includes formula grants under the major K-12 funding streams including ESSA, Perkins, McKinney-Vento, IDEA, and AEFLA. This is likely a response to the delay in releasing nearly \$7 billion in state formula funds in July 2025.

## 2. Supreme Court Hears Arguments in Cases Regarding Transgender Athletes

On 1/13/26, the Supreme Court heard arguments in *Little v. Hecox* and *West Virginia v. B.P.J.*, two cases considering challenges to state laws in Idaho and West Virginia that bar transgender girls and women from participating on female athletic teams. Questioning during the hearing left the impression that the Court seems poised to rule that these state laws do not violate either the Equal Protection Clause or Title IX of the Education Amendments of 1972, thus *permitting* states to restrict transgender women's and girls' athletic participation. Although that outcome appears likely, it is unclear whether the Court will also decide whether the Equal Protection Clause or Title IX *requires* all states (or schools) to implement such restrictions.

The day after the oral arguments, USED's Office for Civil Rights (OCR) announced Title IX investigations into 18 school districts and institutions of higher education across ten states (including CA, CT, HI, MA, ME, NV, NY, PA, VT, and WA). Each institution maintains policies that permit student athletes to compete in sports based on their gender identity. Additionally, on 1/15/26, USED announced a Title IX investigation into the California Community College Athletic Association (CCAA) regarding the association's Transgender Participation Policy permitting transgender female and nonbinary students to participate on women's sports teams and access locker rooms that align with their gender identity once they have completed "at least one calendar year of testosterone suppression treatment." The CCAA investigation will be led by the Special Investigations Team, a joint effort by OCR and DOJ (see our 4/7/25 Alert for more on the SIT partnership).

## 3. Negotiated Rulemaking Committee Reaches Consensus on Higher Education Accountability Regulations as a Result of the One Big Beautiful Bill Act (OBBA)

On 1/9/26, the Negotiated Rulemaking Committee known as the Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) Committee reached consensus on changes made by the OBBBA's earnings accountability provisions and related changes to existing Gainful Employment (GE) and financial value transparency (FVT) regulations. Prior to the meeting, USED released draft regulatory proposals (summarized in our 1/8/26 Alert) that the AHEAD Committee considered. Because consensus was reached, USED must use the agreed-upon language for its proposed regulations.

Specifically, the AHEAD Committee reached consensus on proposed regulations to implement the minimum earnings requirements in OBBBA, modify the existing FVT regulations (now renamed Student Tuition and Transparency System or STATS), and significantly revise the existing GE regulations. Below is a high-level summary of key provisions agreed to by the Negotiated Rulemaking Committee:

- Eliminating the debt-to-earnings (D/E) measure in GE and STATS (in its proposal, USED justified this change by noting that only 94 programs would fail the D/E rate, although those 94 represent approximately 40,000 students and nearly \$400 million in federal loan funding annually);
- Eliminating the possible loss of Pell Grant eligibility for GE programs in most cases (see next bullet), allowing them only to face loss of loan eligibility (similar to degree programs under OBBBA);
- For all programs (not just GE programs), if more than half of an institution's programs or Title IV aid dollars go to programs that fail the minimum earnings threshold, ending all Title IV eligibility for those low-earnings programs at an institution (student loans, Pell Grants, and Campus-Based aid);
- Allowing programs that fall below the minimum earnings threshold to voluntarily cease new enrollments in the program and continue disbursing student loans for up to an additional three years (or the normal length of the program, whichever is shorter);
- For programs that lose eligibility due to low earnings under the regulations, reducing the duration of that lost eligibility from three years to two years; and
- Changing the GE and STATS earnings calculations (threshold and timing) to the ones used in OBBBA (making it easier to pass compared to the existing GE regulations).

Aside from eliminating the D/E measure, the draft regulations do not significantly modify the most critical institutional transparency requirements needed to populate the STATS public disclosure website. Additionally, USED would still be required to publicly report earnings, price, and federal and private debt at all programs of study nationally.

USED will release a Notice of Proposed Rulemaking (NPRM) with request for comments that will reflect the consensus regulatory text sometime in the Spring, followed by a Final Regulation likely midyear. Most of the rules will likely become effective upon publication. A detailed summary of the consensus rules, jointly produced by The Institute for Higher Education Policy and The Institute for College Access and Success, is [available here](#).

#### 4. Other Significant Updates

All recent updates will appear in the [Executive Actions Chart](#), but some of note include:

**USED and DOL Begin Implementing the Postsecondary Education IAA:** On 1/15/26, USED provided an [update](#) on its initial steps to implement the [interagency agreement](#) (IAA) that shifts significant responsibility for the Office of Postsecondary Education's (OPE) grant programs to the U.S. Department of Labor (DOL). Specifically, during the week of 1/20/26, USED will begin detailing staff from OPE's Higher Education Programs (HEP) Division to DOL. USED also signaled that the subsequent step will be for "HEP grantees [to] transition to DOL's Grant Solutions and Payment Management System." (This is consistent with the approach USED and DOL have taken to implement the first IAA regarding career and technical education and adult education.)

On 1/9/26, USED and DOL signed a short addendum to this IAA that removed two OPE programs from the IAA. Per the addendum, USED will continue to administer the [Historically Black College and University Capital Financing](#) program and the [College Housing and Academic Facilities](#) program.

**States Include IAAs in Challenge to Dismantling USED:** On 1/9/26, the group of states that brought one of the lawsuits challenging the Administration's efforts to dismantle USED [filed an amended complaint](#) that folds into their case both factual assertions and legal claims related to the IAAs. This parallels the amended complaint

[filed](#) on 11/25/25 in this same consolidated case by the other set of plaintiffs.

**USED Delayed in Making Continuation Decisions for Mental Health Grants:** As discussed in our [1/8/26 Alert](#), a coalition of states won its lawsuit challenging USED's discontinuation of 138 grants under the Bipartisan Safer Communities Act (BSCA) designed to increase the number of mental health professionals in schools. USED missed the court's initial 12/30/25 deadline to make individualized continuation decisions consistent with the court's summary judgment ruling. Instead, the agency has asked the court to extend the deadline to 2/6/26 and offered to provide the plaintiff states' grantees with five weeks of funding in the meantime.

On 1/9/26, plaintiffs [countered](#) with a motion for the court to enforce its order, requesting that USED make any continuation decisions by the end of January and, in the meantime, to provide six months of funding so grantees can administer their programs through the end of the school year and assure participating graduate students they can pay for semester-long courses. Plaintiffs also sought an accounting of the programs' available funds, especially given that USED [announced](#) on 12/11/25 that it awarded \$208 million to new grantees from these same programs and, according to the plaintiffs, also chose to "frontload" part of its FY26 funding to reserve FY27 funds for some of the continuing grantees in non-plaintiff states. The court will hear arguments about this ongoing dispute on 1/23/26.

**HHS Funding Freeze for TANF, CCDF, and SSBG Paused by Federal Court:** A federal judge granted a [temporary restraining order](#) (TRO) on 1/9/26 that requires HHS to make Child Care Development Fund (CCDF), Temporary Assistance to Needy Families (TANF), and Social Services Block Grants (SSBG) payments to five states (CA, CO, IL, MN, and NY) without adding any new requirements to justify their funding drawdowns, including the ["Defend the Spend"](#) process announced by the Office of Child Care on 1/5/26 through a notification to CCDF Lead Agencies. The 14-day TRO expires on Friday, 1/23/26, when the court will hear arguments on the plaintiff states' preliminary injunction motion. If granted, the preliminary injunction would prevent HHS from implementing the freeze or requiring atypical spending justifications in these five states while the litigation proceeds to a final determination of the legality of HHS's actions.

Because of the TRO, the five plaintiff states are not subject to the "Defend the Spend" process, but the states not targeted by the funding freeze must now provide additional justification prior to drawing down funds. This new process has already resulted in some delays in CCDF funding. For example, at least one Missouri child care program [temporarily closed](#) as a result, but funding to the state has now been [restored](#).

**USED Announces Tribal Consultation on IAAs:** On 1/9/26, USED [announced](#) it will conduct Tribal consultation on the [interagency agreements](#) (IAAs) that shift significant responsibilities to the U.S. Departments of the Interior (DOI) and Labor (DOL). (For our legal analysis of the IAAs, see [Beyond "The Maximum Extent Permitted By Law"](#).) According to USED, the consultations are intended to "receive meaningful input and guidance from American Indian, Alaska Native, and Native Hawaiian communities to ensure that Tribal leader views inform the implementation of the IAAs." Topics to be discussed during the consultation include ensuring the continuity and stability of funding to Tribal communities, coordination mechanisms across the three agencies, how to ensure Tribal voices meaningfully inform IAA implementation, and anticipated impact of the IAAs, among others. The public has the opportunity to submit comments on these topics to [TribalConsultation@ed.gov](mailto:TribalConsultation@ed.gov) through 3/12/26. USED's existing Tribal consultation [policy](#) says USED will "seriously consider tribal views, information, and interests," and "make a serious effort to incorporate those views, information, and interests in ED's programs whenever new initiatives or program changes would have a substantial direct effect on Indian educational opportunities under those programs."

**USED Pauses Wage Garnishment for Borrowers with Defaulted Student Loans:** On 1/16/26, USED [announced](#) it will delay the implementation of involuntary collections for defaulted federal student loan borrowers, including garnishments of wages and tax refunds. This marks a departure from previous [statements](#) that borrowers were expected to start receiving notices this month that USED would begin garnishing their wages due to defaulted student loans. Although USED did not provide an updated timeframe for when collections would begin, it framed the pause as a “temporary delay” to allow USED to implement changes to the student loan program required under the One Big Beautiful Bill Act (OBBBA), including revised rehabilitation provisions and a new income-driven repayment (IDR) plan. The new IDR plan is expected to be available to borrowers on 7/1/26.

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*DISCLAIMER: Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided above does not serve as legal counsel and, given the pace of action, could be outdated quickly. Nonetheless we hope this information is helpful. If you have any suggestions or feedback please send it to [info@educationcounsel.com](mailto:info@educationcounsel.com). Updates in this Alert are current as of January 21, 2025 at 10:00 am ET.*