Thompson & Horton LLP
ATTORNEYS | COUNSELORS

Houston
Dallas
Austin
Fort Worth

Christopher P. Borreca
Partner

(713) 554 - 6740 Office
(713) 583 - 8664 Fax

cborreca@thompsonhorton.com

Thompson & Horton LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas
77027 - 7554

February 8, 2021

Dr. Curtis Culwell
Executive Director
Texas School Alliance

Via email: curtis@texasschoolalliance.org

Re: TSA Federal Update

Dear Dr. Culwell:

The following information is provided relative to the federal activities of the TSA.

1. Budget Update

Schools need $60 billion to prevent teacher layoffs and close budget gaps, $50 billion to implement social distancing by reducing class size, and $29 billion for extended learning programs and summer schools, in order to help students and educators recover from the coronavirus pandemic, according to new details from Biden's K-12 relief proposal.

Those figures are part of the Biden administration's $145 billion estimate of pandemic-related needs for K-12 schools that will help set the stage for COVID-19 relief negotiations in Congress on a new aid package. Democratic lawmakers have introduced their own suite of relief bills that will also likely play a part in the debate, and it is ultimately up to Congress to agree on relief legislation for schools and other areas.

The new funding justification from the Biden administration seeks to support the $130 billion K-12 relief plan put forward by the president shortly before his inauguration. Though some lawmakers have suggested President Joe Biden's proposal is too large, the total needs outlined in the document come to $145 billion, exceeding the amount included in his plan. It also includes $14 billion for additional custodial staff, $14 billion for transportation, $7 billion to improve student access to the internet to close the "digital divide," and $6 billion for personal protective equipment.

There is also $2 billion in the estimate for "equity challenge" grants for state and tribal governments to "partner with teachers, parents, and other stakeholders to advance equity- and evidence-based policies to respond to COVID-19 educational equity challenges."

While Biden has tied the need for more relief funding to his goal of opening a majority of K-8 schools in his first 100 days in office, the funding estimates in the document cover the 2020-21 and 2021-22 school years.

“Funds are included for next year because we know that in order to invest in safely reopening, districts need financial certainty that they will not have to lay off teachers next fall in order to implement consistent COVID-19 safety protocols,” says the Biden estimate obtained by Education Week. “They do not have that certainty right now. Further, school districts that are already open need more support to implement mitigation efforts that protect students, educators, and school staff.”

The Biden template cited a variety of outside groups for its estimates. For example, it says it relied on the Learning Policy Institute (which is led by Linda Darling-Hammond, who was in charge of Biden’s education transition team), the National Conference of State Legislatures, and the left-leaning Center on Budget and Policy Priorities, among others. For the $50 billion estimate for social distancing (which includes smaller class sizes), it drew on an American Federation of Teachers estimate, and the AFT was also a source for the $6 billion estimate need for personal protective equipment.

The document also relied heavily on the Centers for Disease Control and Prevention for cost estimates. However, the estimate notes that a previous CDC estimate of costs for safely reopening schools did not include several factors, like social distancing.

Although the estimate puts a $199 billion price tag on the various needs for K-12, it subtracts the $54 billion already provided for K-12 public schools by a relief package enacted last December.

Congress pushed President Biden's $1.9 trillion stimulus package closer to completion on Friday, nudging along a third stimulus check of up to $1,400 with it. First the Senate and then the House of Representative drew the budget outlines that will allow Democrats to use a powerful tool, budget reconciliation, to bypass Republican opposition and move quickly to approve Biden's relief bill -- and its $1,400 stimulus check -- along partisan lines. Now the Democrats need to fill in the details of the budget, including whether to target the stimulus checks to push out higher earners.

A change to the stimulus check formula could mean that while some people who qualify could get a larger payment than they did with the first or second check, others who were eligible before will receive less money -- or even none at all a third time.

Biden is resolute in delivering a $1,400 stimulus check maximum per person: "I'm not cutting the size of the checks. They're going to be $1,400. Period. That's what the American people were promised," he said Feb. 5. Biden's statement effectively killed a $618 billion proposal from a group of moderate Republicans that advanced a smaller $1,000 stimulus check.

The simple explanation is that some people are concerned that a stimulus check for $1,400 would be sent to some people with relatively high-income levels. If Congress tailors the bill to lower income people, then, for example, using our stimulus calculator for the third check, a person could make $102,900 per year (in adjusted gross income, or AGI) and still get a partial payment of $5.

2. Political heat is intensifying around school reopening

The plan will likely lead to debates on several points.

The plan says $29 billion for learning recovery would support things like 20 days of additional instruction for "all low-income students." Although estimates of students' "learning loss" during the pandemic should be considered with caution, 20 days of additional learning might fall well short of how much many students have fallen behind. In fact, Democrats in Congress have recently proposed $75 billion to address learning recovery over fiscal 2021 and fiscal 2022.

Much of the proposed funding might not be particularly helpful when it comes to Biden's immediate goal of getting most K-12 schools open within 100 days of his inauguration. Some lawmakers might favor a narrower approach.

Most states have left it up to individual districts to decide between in-person, hybrid, and remote-only learning options. In addition to his "100 days" promise, Biden has also signed executive orders directing the U.S. Department of Education to provide clear guidance to help schools reopen safely, and to collect data about where schools stand with respect to COVID-19.

School leaders and education advocacy groups have continued to press for aid throughout the pandemic to cover COVID-19 mitigation, academic issues, and budgetary concerns. Yet others wonder whether the $67 billion in virus relief already provided by Congress for K-12 education should be sufficient for schools to largely resume traditional operations.

Concerns continue to percolate about whether Biden's 100-days benchmark is ambitious enough, or whether his administration will push aggressively to ensure a big uptick for in-person learning, as high-profile disputes about reopening school buildings play out in places like Chicago and San Francisco.

Earlier this week, a confusing sequence of events played out in which CDC Director Rochelle Walensky said that teacher vaccinations are not a prerequisite for schools safely reopening. White House Press Secretary Jen Psaki subsequently said Walensky was not outlining official Biden administration policy and was speaking only in a personal capacity, even though Walensky made the statement at a White House briefing.

3. Staffing and Personnel Update

The latest round of political appointees to the U.S. Department of Education includes a veteran of Capitol Hill and Beltway education groups, the former leader of Democrats for Education Reform's District of Columbia affiliate, and two former Bill & Melinda Gates Foundation staffers.

The Biden administration appointments, announced February 3rd, fill spots in key offices, although nominees for the top jobs in the Office for Civil Rights and Office of Planning, Evaluation, and Policy Development. (We gave folks a heads up about two of the most recent appointments here and here before they were officially announced.) However, a few such jobs are being filled on an acting basis.

It is difficult to discern just one trend or policy direction based on Biden's Education Department appointments so far; those who have worked for and supported teachers' unions in the past, for example, will be working alongside union skeptics and those who have drawn labor's ire in the past. The administration announced its first set of department appointees last month, and it included two former National Education Association staffers.

Meanwhile, Miguel Cardona's progression towards becoming the next education secretary continues, following his confirmation hearing. The Senate education committee is due to consider his nomination on Feb. 11.

Here are a few notable names from the latest round of appointments:

1. Jessica Cardichon, Deputy Assistant Secretary, Office of Planning, Evaluation, and Policy Development. Cardichon is an education policy veteran in Washington. She comes to the Education Department from the Learning Policy Institute, a K-12 policy and research group founded and led by Linda Darling-Hammond, who led Biden's transition team for the department. Cardichon was the group's federal policy director. While at LPI, Cardichon contributed to reports about COVID-19 relief, how to "reimagine schooling," and student access to certified teachers.

   She's also worked as education counsel to Sen. Bernie Sanders, I-Vt., on the Senate education committee; the Alliance for Excellent Education, a research and advocacy group, and at Teachers College, Columbia University. A long-time ally of teachers' unions and a critic of standardized testing, Sanders has taken on a big role in the Senate during the creation of a new COVID-19 relief package.

2. Ramin Taheri, Chief of Staff, Office for Civil Rights. Taheri comes to the department after serving as the District of Columbia chapter director of Democrats for Education Reform, a group that promotes charter schools, K-12 education funding, test-based teacher and school accountability, and other policies. The group divides opinion in the left-leaning K-12 policy space. Some have championed the group for focusing on issues they say will better served students of color and disadvantaged learners, while other claim DFER undermines teachers' unions and traditional public schools. News that DFER was backing certain big-city superintendents to be Biden's education secretary provoked pushback from union supporters and others skeptical of DFER. (Cardona was not on DFER's list of preferred choices.) Taheri has also worked at Chiefs for Change, a group of district superintendents that provokes similar, if not identical, political sentiments.

Last year, DFER's D.C. chapter under Taheri provoked controversy by singling out a candidate for the District of Columbia Council for wanting to cut police funding. Asked about the negative advertising, Taheri told the Washington City paper that the group wanted to inform voters about issues beyond education, and that the candidate's position on police budgets was "deeply unpopular" with voters. (The candidate, Janeese Lewis George, who accused DFER of fearmongering, ultimately won her election.) The question of whether police should be in schools, and educators' attitudes toward school resource officers, gained prominence after the death of George Floyd in Minneapolis at the hands of police last year. The City Paper's story about DFER's mailers focused on George was published three days after Floyd's death. Taheri later said that the group's mailers were a mistake.

3. Nick Lee, Deputy Assistant Secretary, Office of Planning, Evaluation, and Policy Development; Sara Garcia, special assistant, office of planning, evaluation, and policy development. Both Lee and Garcia come to the department from the Bill & Melinda Gates Foundation, where Lee was a senior program officer and Garcia was a program officer.

   Although Lee previously managed $10 million in annual education grants covering both K-12 and higher education, according to his LinkedIn profile, he is now listed himself as an assistant secretary for higher education at the department as of this month. Garcia also has a background in higher education and used to work on the Senate education committee for Sen. Patty Murray, D-Wash., who is now chairwoman of the committee.

   The Gates Foundation has had a long, complex, and controversial involvement in education policy. For many years, it focused its considerable grant-making power on teacher effectiveness, teacher-performance systems, and support for the Common Core State Standards; by 2015, the foundation estimated it had put $900 million in grants toward teacher policy and programs. Previously, it had focused on supporting small high schools. These efforts became more politically controversial over time.

   Supporters have applauded its focus on educators and improving instruction, while critics say its outsized influence has had a detrimental effect on policymakers. A 2018 study of one of its biggest teacher-effectiveness efforts in three districts showed no gains for students. In recent years, the foundation has shifted its focus to support higher education access for students of color and disadvantaged students.

4. Committee and Legislation Update

The Education and Workforce Committee is having its first organizational meeting February 8, 2021. The committee now has only one Texan as a member, Rep. Castro from San Antonio. The other Texan, Rep. Ron Wright, died February 7, 2021 from COVID-19 complications. Rep. Greene, from Georgia was removed by a vote of the House from all committee assignments, including Education and Workforce. I am not aware of a replacement choice at this time.

The Senate HELP committee remains largely the same from the previous Congress. The Chair is Patty Murray from Washington, the Ranking Member is Richard Burr from North Carolina.

No legislation in either committee is pending at the moment. As previously mentioned, nearly 400 bills were passed by the House last Congress only to die in the Senate. I expect many of those to be reintroduced this Congress, including H.R. 2574.

5. Equity and Inclusion Enforcement Act of 2019

H.R. 2574 would amend Title VI of the Civil Rights Act of 1964 to create a private right of action to file disparate impact claims. Disparate impact refers to the discriminatory effects caused by policies that, on their face, appear neutral as instituted by an organization or employer. According to legal experts and an analysis of court filing data from the federal judiciary over the past 30 years, disparate impact claims brought under Title VI are most often related to education (although they are applicable to housing and public transportation, among other settings) and have historically constituted a small portion of civil rights litigation—most such claims are filed under other titles of the act regarding employment issues.

As more information is obtained, we will share with TSA.

Very truly yours,

Thompson & Horton LLP

Christopher P. Borreca

CPB/bg
Attachment

cc: Dee Carney — *Via email: dcarney@hillcopartners.com*
HillCo Partners

David Thompson — *Via email: dthompson@thompsonhorton.com*
(firm)

APPENDIX A

HOUSE COMMITTEE ON THE BUDGET

Chairman John Yarmuth

October 28, 2020

Budget Reconciliation: The Basics

Executive Summary

What is "reconciliation"?

Reconciliation is a tool – a special process – that makes legislation easier to pass in the Senate.

How is it different from a regular bill?

Instead of needing 60 votes, a reconciliation bill only needs a simple majority in the Senate.

Reconciliation starts with the congressional budget resolution. The budget cannot be stalled in the Senate by filibuster, and it does not need the President's signature.

If the budget calls for reconciliation, it tells certain committees to change spending, revenues, or deficits by specific amounts. Each committee writes a bill to achieve its target, and if more than one committee is told to act, the Budget Committee puts the bills together into one big bill.

That bill has special status in the Senate. Like the budget, it cannot be filibustered, and only needs a simple majority to pass.

Why not use it for everything?

Other special rules, which are designed to protect the rights of the minority party, apply to reconciliation bills. Only policies that change spending or revenues can be included. Senate debate time is limited, and only certain kinds of amendments can be offered. For example, the Social Security program cannot be changed in reconciliation.

The Basics

Budget reconciliation provides a fast-track process for consideration of bills to implement the policy choices embodied in the annual congressional budget resolution. During the 115th Congress, for example, Republicans used this tool twice to pursue their policy goals. This report summarizes the reconciliation process and the recent history of its use.

Overview

In its annual budget resolution, Congress sets total spending, revenues, the surplus or deficit, and the public debt. The budget may also include reconciliation instructions. These instructions direct one or more committees to recommend changes to existing law to achieve specified changes in spending, revenues, deficits, and/or the debt limit. Instructed committees can comply with their targets by making changes to any of the programs under their jurisdiction.[1]

In the Senate, the resulting reconciliation bill incorporating those proposals is considered under expedited procedures that limit debate and amendments. Like the budget resolution, a reconciliation bill cannot be filibustered in the Senate and therefore needs only a simple majority to move to a final vote. However, there are limitations on the substance of what can be included in a reconciliation bill, although a 60-vote majority in the Senate can override any objections.

How Reconciliation Works in the House

Each instructed committee drafts recommendations for spending and/or revenue changes in a manner subject to its committee rules and the rules of the House. For example, the House rule on germaneness is enforceable in committees. Committees may not adopt rules only allowing consideration of deficit-neutral or deficit-reducing amendments, even pursuant to a unanimous consent request. In meeting its reconciliation instructions, a committee may choose to increase costs in some areas as well as reduce costs in others, so long as the net budgetary effect of a committee's proposals complies with its instruction.

Committees submit their recommendations for spending and/or revenue changes to the Budget Committee, where the separate measures are packaged and reported to the floor (when only one committee has instructions, that committee reports its measure directly to the floor). The Budget Committee cannot make substantive changes to the recommendations, even if the committees fail to meet the targets specified in the reconciliation directive.

Amendments to Reconciliation on the House Floor

Any House Member may ask the Rules Committee to allow amendments to the reconciliation package on the House floor. The Rules Committee historically has been receptive to amendments proposed by the Chair of the Budget Committee, which generally reflect leadership views. The Budget Committee markup of the reconciliation recommendations generally includes non-binding motions offered by the minority to instruct the Committee Chair to ask the Rules Committee to make specific amendments in order on the floor. In the past, the Rules Committee has made the Budget Committee Chair's amendment in order, sometimes incorporating it into the measure through a self-executing rule.

Under the Congressional Budget Act, there is a point of order against amendments that worsen the deficit relative to the underlying bill.[2] All amendments must also be germane to the underlying bill.

If House Committees Do Not Comply with Reconciliation Instructions

While there are no penalties or points of order for failing to comply with the fiscal targets in the reconciliation directives, instructed committees generally do make the required changes. If they do not, the House Rules Committee could make in order an amendment that achieves the target in a way that is counter to the wishes of the instructed committee. Note that the budget resolution's reconciliation targets apply to the initial recommendations from the committees and not to the reconciliation conference agreement, which may contain larger or smaller changes in spending or revenues.

Benefits of Reconciliation in the Senate

The reconciliation procedures in Senate committees are similar to those in the House. In the Senate, however, reconciliation bills are subject to expedited procedures during floor consideration, as well as specific limits imposed by the so-called “Byrd rule” (described further below).

The first major benefit is that debate on a reconciliation bill or reconciliation conference report is limited to 20 hours, so it cannot be filibustered on the Senate floor. The practical effect is that the bill can be passed with a simple majority vote, in contrast to most legislation, which requires a 60-vote supermajority to invoke cloture and limit debate. After time for debate has expired, Senators may continue to offer amendments, but they are not debatable. This is colloquially referred to as “vote-a-rama.” Second, amendments to a reconciliation bill must be germane, which is normally not the case in the Senate.

Third, with only a few exceptions, amendments to a reconciliation bill on the Senate floor cannot increase the deficit; they must either lessen the deficit or be deficit-neutral. One exception is that amendments striking an entire provision are always in order, even if the provision being removed saves money. In the Senate, if the reconciliation bill fails to comply with a committee’s target, there is a procedure to allow non-germane floor amendments to bring the bill into compliance with the reconciliation instructions.

Limitations of Reconciliation in the Senate – The Byrd Rule

Named for Senator Robert Byrd, the Byrd rule (Section 313 of the Congressional Budget Act) was first adopted in the mid-1980s to limit extraneous provisions from inclusion in reconciliation bills. Because reconciliation bills are considered using expedited procedures in the Senate, the Byrd rule is aimed at preventing the use of reconciliation to move a legislative agenda unrelated to spending or taxes, and to some extent it limits Congress’ ability to use reconciliation to increase deficits – at least over the long-term. The Byrd rule prohibits the inclusion of “extraneous” measures in reconciliation, defining “extraneous” as follows:

- measures with no budgetary effect (i.e., no change in outlays or revenues);
- measures that worsen the deficit when a committee has not achieved its reconciliation target;
- measures outside the jurisdiction of the committee that submitted the title or provision;
- measures that produce a budgetary effect that is merely incidental to the non-budgetary policy change;
- measures that increase deficits for any fiscal year outside the reconciliation window; and
- measures that recommend changes in Social Security.

Any Senator may raise a point of order against an extraneous provision in the reconciliation bill, amendments, or the conference agreement. The Senate Parliamentarian decides whether there is a Byrd rule violation, and provisions struck through a Byrd rule point of order cannot be offered later as amendments. However, Byrd rule points of order can be waived by a vote of 60 Senators.

In addition to reconciliation-specific points of order, reconciliation bills are subject to other Senate points of order, like the Senate PAYGO rule, that apply to all legislation.

Reconciliation Conference Agreement Procedures

As noted above, a reconciliation conference agreement is not bound by the original reconciliation instructions. Technically, neither the House reconciliation bill nor the Senate bill is bound by the targets, but the threat that the Budget Committees – or someone else – could propose floor amendments bringing the bills to their targets has historically given instructed committees the incentive to meet the targets themselves. That threat does not apply to conference agreements, which cannot be amended on the floor.

However, even though a conference agreement cannot be amended, it is still subject to Byrd rule requirements in the Senate. Thus, although the Byrd rule does not apply in the House, it constrains what can be included in the reconciliation conference agreement. A provision violating the Byrd rule can be struck from the conference agreement on the Senate floor unless 60 Senators vote to waive the point of order. Stripping a provision due to a Byrd rule violation does not mean the conference agreement is defeated, just that the agreement will be sent to the House without the stripped provision.

Recent History

Since 1980, Congress has sent 25 reconciliation measures to the President – 4 bills were vetoed and 21 enacted – primarily legislation that reduced the deficit through cuts in mandatory spending or increases in revenues. However, beginning in the early 2000s, Republican Congresses began to routinely use reconciliation to increase the deficit, enacting major tax cuts without offsetting the revenue loss in 2001, 2003, and 2006.[3] When Democrats took control of the House in 2007, House rules were changed to allow reconciliation to be used only for deficit reduction. Republicans changed that rule in 2011 to disallow spending increases but permit revenue losses. That rule change allowed Congress to again use the reconciliation process to increase deficits, which the Republican majority did in 2017.

In the 115th Congress, Republicans used reconciliation to enact their tax law. In the final months of 2017, the House and Senate approved a reconciliation measure (H.R. 1) to cut taxes mostly for the wealthy and corporations and to eliminate the penalty for not having health insurance. The Congressional Budget Office estimated at the time that the legislation would add $1.5 trillion to federal deficits over 10 years, which has been revised to $1.9 trillion. President Trump signed this legislation into law on December 22, 2017. Earlier in that same year, Republicans attempted to use reconciliation to dismantle the Affordable Care Act. The House approved a reconciliation measure (H.R. 1628) to repeal major provisions of the health care law and cap federal funding for Medicaid, but the Senate failed to get the needed votes to advance a bill.

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[1] The Congressional Budget Act defines reconciliation bills that include changes to Social Security as out of order, however.

[2] Even if the underlying bill achieves greater savings than the budget resolution instructed, amendments that worsen the deficit are not permitted in the House.

[3] See Congressional Research Service Report R40480, "*Budget Reconciliation Measures Enacted into Law: 1980-2017*."