Federal Education News Update – September 2013

★ House Approves ESEA Reauthorization Bill; Senate Committee Passes Its Version of Reauthorization
★ President Signs “Bipartisan Student Loan Certainty Act”
★ FCC Seeks Comments on Proposed Changes to E-Rate Program

Congress adjourned in early August for its five-week summer recess and members packed their bags with a modest record of mid-year progress on key education legislation. The House of Representatives approved significant updates to the Workforce Investment Act (WIA) and the Elementary and Secondary Education Act (ESEA), while also passing legislation approved in the Senate to reduce student loan interest rates. Across Capitol Hill, the Senate Health, Education, Labor, and Pensions (HELP) Committee also approved ESEA and WIA reauthorization bills and the Senate Appropriations Committee passed Fiscal Year 2014 budgets for the U.S. Department of Education (ED) and the Department of Health and Human Services (HHS).

Even as Congress made progress on these measures, the Administration invested considerable energy in championing the president’s preschool initiative, featuring numerous high-level events around the country and in Washington, D.C., which were designed to highlight and build support for the Administration’s proposals. The Department of Education also recently opened the Fiscal Year 2013 competitions for the Investing in Innovation (i3) and Race to the Top – District programs. This Legislative Brief provides additional information about these and other important developments on the federal and national education policy landscape.

The Administration’s Early Learning Agenda

During the past few weeks, ED Secretary Arne Duncan and HHS Secretary Kathleen Sebelius continued championing the Administration’s proposed “Preschool for All” initiative and related investments. The plan features voluntary expansion of high-quality preschool programs for four-year olds from low- and moderate-income families (using both federal and state resources). The president has also requested new resources for two other proposed competitive grant programs: 1) the “Preschool Development Grant” program, which would be designed to build state capacity to implement high-quality preschool programs; and 2) the Early Head Start-Child Care Partnerships program, which would increase the delivery of high-quality early childhood development services that satisfy Early Head Start standards.

Senate HELP Committee chairman Harkin and House Ranking Member Miller are working on legislation that will reflect key elements of the president’s proposal, but with significantly greater detail and some variations based on early discussions with experts and stakeholder groups. Observers expect the bills, which will serve as a focal point for further discussions about the president’s ideas, to be introduced in September. The Senate HELP Committee may also hold early learning-focused hearings during the fall to gather feedback and build a record for action in the Senate, possibly as part of a “grand bargain” on broader tax, budget, and appropriations matters.

Meanwhile, the U.S. Department of Education announced that Libby Doggett will serve as the head of the ED’s office of early learning. In her new role, Doggett is expected to be an important voice for the Administration’s early learning proposal. Doggett presently serves as the director of the Pew Charitable Trust’s home visiting project.
ESEA Reauthorization and other K-12 Education Issues

ESEA Reauthorization

The full House of Representatives and the Senate Health, Education, Labor and Pensions (HELP) Committee approved ESEA reauthorization bills in June and July respectively. Although the likelihood of Congress approving a bill this year remains very low, passage of the measures reflects significant progress in a process otherwise characterized by gridlock. Passage by the House reflects the furthest an ESEA reauthorization bill has made it since the process began in 2007, yet there are still stark differences between the Administration, Senate, and House visions that create significant hurdles for getting a bill signed into law before the end of this Congress. A brief overview of action by the committees follows below, along with expected next steps for the legislation.

The Senate Bill

The Senate HELP Committee passed legislation (S.1094) to update the ESEA on June 12, by party line vote (12-10). Final passage of the bill by the committee came after two days of debate, during which the committee approved 10 amendments (9 Democratic and 1 Republican) and rejected 13 others (1 Democratic and 12 Republican). Amendments passed or failed along mostly party-line votes, with several modest exceptions (e.g., Sen. Whitehouse (D-RI) voted with Republicans to reject a proposal by Sen. Bennet (D-CO) to create an office of rural education within the Department of Education and Sen. Kirk (R-IL) voted in favor of Sen. Murray’s (D-WA) amendment to require schools to report on the academic outcomes of military-connected students).

Ranking Member Alexander (R-TN) offered the Every Child Ready for College and Career Act (S. 1101), as a comprehensive alternative to Chairman Harkin’s reauthorization bill, but the measure failed on a strictly party line vote following nearly two hours of debate. Sen. Alexander’s bill proposed to require states to have accountability, assessment, and school improvement systems, but deferred to state and local decision makers to define their specific parameters and requirements. Differing from his Republican counterparts in the House Education and the Workforce Committee, Sen. Alexander’s bill did not call on states to implement educator evaluation systems in exchange for accepting ESEA Title II funding, but instead made establishing and implementing such systems an allowable use of Title II funds. Following the failure of Alexander’s comprehensive reauthorization proposal, Republican committee members offered discrete elements of the Alexander bill as additional amendments for the committee’s consideration. None of these discrete proposed changes to the Chairman’s reauthorization package was approved by the committee. (A complete list of approved and rejected amendments may be viewed on the HELP Committee’s website at www.HELP.senate.gov.)

Senate consideration of the HELP Committee’s ESEA bill has not yet been scheduled, but is expected in late September or early October. Sen. Alexander has expressed support for debate by the full Senate of the chairman’s bill, so long as Republican senators are provided an opportunity to meaningfully debate the bill, including time to offer a range of amendments.

The House Bill

The House Education and the Workforce Committee approved Chairman Kline’s (R-MN) ESEA reauthorization (H.R.5, the Student Success Act) on June 19 by a party line vote (23-16). Chairman Kline’s bill proposes a significant transfer of authority to state and local decision makers and consolidation of numerous programs. His bill would require states to implement statewide accountability and improvement systems (including publishing detailed report cards on school performance), but proposes to leave core requirements of these systems up to state and local decision makers. The Kline bill significantly consolidates the ESEA’s competitive grant programs into large flexible block grants. Notably, the Chairman’s bill also required states to implement educator evaluation systems (and use them for personnel decisions) in exchange for accepting ESEA Title I funds (this requirement was later removed by the full House by voice vote).

The half-day House committee markup featured consideration of only three amendments. Ranking Member Miller (D-CA) offered a comprehensive Democratic ESEA reauthorization proposal (loosening key ESEA Title I requirements, but maintaining a significant federal role in accountability and school improvement) as an amendment to Chairman Kline’s bill, which was defeated by the committee. Rep. Heck (R-NV) offered an amendment encouraging local school districts to expand dual enrollment programs and early college high schools, which was approved by voice vote.
Finally, Rep. Thompson (R-PA) offered and withdrew an amendment to repeal Title I’s Education Finance Incentive Grant program.

The full House of Representatives approved H.R. 5 on July 18, by a largely partisan vote (221-207). The two-day floor debate involved consideration of 26 amendments (you may request a full list of the amendments from EducationCounsel or read them on the House Rules Committee’s website). Two significant amendments were approved during the House debate. As noted above, the first eliminated the committee bill’s teacher evaluation system mandate. This important change was largely viewed as a concession by Chairman Kline and House Leadership to entice additional Republican support for the legislation. The second amendment, offered by Majority Leader Eric Cantor, permitted portability of Title I resources (tied to individual students).

The Administration opposed the bill, as did a number of civil rights and business organizations, whereas many education groups came out in support of the bill.

As previously indicated, the outlook is uncertain. In the face of possible inaction, the Administration is therefore is deliberating and planning a process for ESEA waiver renewals.

**District ESEA Waivers**

On August 6 the Department of Education approved a joint ESEA waiver application filed by eight California school districts (Fresno Unified, Long Beach Unified, Los Angeles Unified, Oakland Unified, Sacramento City Unified, San Francisco Unified, Sanger Unified, and Santa Ana Unified). Similar to the state waivers approved by the agency, the district waiver was granted in exchange for a commitment by the districts to adopt a range of required reforms, including the implementation of educator evaluation systems.

**Race to the Top - District**

On July 30, the Department of Education opened the Fiscal Year 2013 Race to the Top District Competition. Applicants will compete for a share of $120 million in awards focused (again) on personalized learning. Five to ten winners will receive 4-year awards ranging from $4 million to $30 million, depending on the population of students served through the plan. Applicants must submit their proposals no later than October 3.

### Higher Education

**Stafford Loan Rates**

The House approved legislation last week previously approved by the Senate (81-18) to tie student loan interest rates to the U.S. Treasury 10-year rate. Under current market rates, this change will lower undergraduate interest (on new loans taken out beginning on July 1, 2013) rates from 6.8 percent to 3.9 percent. Under the Bipartisan Student Loan Certainty Act’s terms, rates may not exceed 8.25 percent, protecting students from rising market rates over time. The president quickly signed the bill, which brings a months-long stand-off on the issue to a close.

**“Gainful Employment” Negotiated Rulemaking**

On June 12, 2013, the Department published a notice in the Federal Register announcing the establishment of a negotiated rulemaking committee to prepare proposed regulations to establish standards for programs that prepare students for gainful employment in a recognized occupation. Negotiators were named to the committee this week, and they are expected to convene for the first time on September 11.

ED first published final gainful employment rules in June 2011. The Association of Private Sector Colleges and Universities sued to overturn the rules, arguing that the department had exceeded its statutory authority and had arbitrarily set three key benchmarks that covered institutions would have to meet in order to remain eligible for Title IV funds.

During the summer of 2012, a federal judge overturned the rules on the basis that one of the benchmarks (regarding the minimum percentage of graduates meeting their repayment obligations) was “arbitrary and capricious.” The court said ED failed to provide sufficient evidence justifying the percentage of students who were meeting their repayment obligations. The other two benchmarks were vacated because they were too “intertwined” with the rejected repayment benchmark. The court said, however, that ED had NOT exceeded its statutory authority under Title IV. After losing an appeal earlier this year, ED launched the new negotiated rulemaking described above.
Appropriations

In July, the Senate Committee on Appropriations approved the fiscal year 2014 Labor-HHS-Education spending bill (S.1284) on a party-line vote (16-14). The Committee-passed bill includes a relatively small increase over the level enacted in fiscal year 2013, but almost 35 percent more than what the House appropriators have allocated for their bill. Republican committee members said the bill’s the funding levels were too high, including spending too much to implement the 2010 health care overhaul.

The bill approved by the Appropriations Committee would provide $783.4 billion for the departments, including $164.3 billion in discretionary funding. That is a relatively small increase from the $156.5 billion enacted for fiscal 2013, but nearly 35 percent more than the $121.8 billion House appropriators allocated for their Labor-HHS-Education bill. Included in the Senate bill is an increase in funding for Head Start and other early-childhood programs, including $750 million for states’ preschool development grants. The measure also provides $14.6 billion, or $125 million more than the pre-sequester level, for Title I grants and $400 million for a new Race to the Top competition geared toward colleges. Special-education programs would be funded at roughly $12.8 billion.

The Labor-HHS-Education appropriations bill has not been considered as a stand alone piece of legislation on the Senate floor since 2007, which does not bode well for any floor time this year. The House Committee on Appropriations scheduled a markup of its proposal, but has postponed consideration of the bill indefinitely. This has been done in large part due to House Republican disagreement about the bill’s role in defunding the Affordable Care Act. The likelihood of a bill moving through regular order is highly unlikely given the debate around health care, as well as the difference in funding levels between the Senate and House. Similar difficulties are evident with other appropriation measures, and conversations have begun on Capitol Hill about passing a short-term Continuing Resolution when Congress returns in September.

Other Developments

The Federal Communications Commission (FCC) on July 23 released a Notice of Proposed Rule Making (NPRM) regarding a comprehensive review and update of the E-rate program. Established by the Telecommunications Act of 1996, the E-rate provides funding to subsidize the telecommunications needs of schools and libraries. The NPRM seeks to modernize and expand the program focused on three core goals:

1) ensuring access to and affordability of broadband;
2) maximizing cost-effectiveness of E-rate funds; and
3) streamlining program administration.

In connection with each these goals, the FCC proposed a variety of measures for each goal as well as a number of changes to the operation of the current E-rate program. The Commission has also identified a number of outlier program issues it feels merit renewed conversation and possible change.

The Commission seeks comment on all of these proposals and welcomes suggestions regarding alternative means of achieving its stated goals. All comments must be submitted by September 16, 2013. Reply comments are due on October 16.

Upcoming Events

September 9 – Congress reconvenes following five-week summer recess
September 11 – Gainful Employment Negotiated Rule-making Committee to convene
September 30 – Last day of Fiscal Year 2013
October 3 – Race to the Top District applications due

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