Federal Funding and Legislative Updates

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Agenda
- State of Congress
- Federal Funding Update
- Policy Legislation
- Looking Toward 2015

State of Congress

Congressional Approval
Source: PPP Poll, October 2013
Congressional Approval

Data: Gallup Polling

Climate Within Congress

- The result:
  - Loss of working relationships between members and staff
  - Due to partisanship generally as well as retirements, elimination of benefits/salary cuts
  - 54 members of Senate have served less than 1 full term, 18 have served more than 3
  - Short term fixes to problems
  - With promise of future long-term fix
  - Constant crisis situation
    - Discussions almost always reach crisis level due to procrastination, gamesmanship, statements about high stakes
The Next Big Hurdle: Election 2014

- Only a few months left to legislate
- Members of Congress playing to a number of constituencies:
  - Special interest groups (NRA, EMILY’s List, unions, environmental groups, etc.)
  - In-district constituents
  - Parties and party subdivisions
- See these priorities make an appearance through:
  - Legislative action
  - Hearings/meetings/round-tables
  - Public discussions and statements

Brief Refresher: Sequestration

- Sequestration was triggered by the 2011 Budget Control Act (BCA) after failure of Congressional debt “supercommittee” to balance budget
- Procedure generally follows 1985 Balanced Budget and Deficit Control Act, but specifics are subject to modification by Congress at any time
- This sequester was modified in the American Taxpayer Relief Act of 2012, commonly known as the “fiscal cliff deal.”
- That law changed the start date of sequester cuts and the amount of cuts for FY 2013
Sequestration Refresher
- Began March 1, 2013
- In FY 2013, cuts were carried out as automatic, across-the-board reductions to actual spending levels for all non-exempt programs, projects, and activities
- Cuts were approximately 5%, but varied because:
  - Cuts were relative to FY 2013 budget
  - Budget allocations at State and district level vary due to:
    - New Census/population data
    - “Hold harmless” and “Small State Minimum” requirements in laws
  - Second 2013 CR made additional 0.2% across-the-board spending cut

Sequestration Cuts
- For FY 2013, in millions of dollars, representing a 5% cut

Sequestration in FY 2014 (as designed)
- In FY 2014 through FY 2021, additional cuts were meant to be implemented through reductions to congressional “spending caps”
  - Internal limits that Congress sets on its own spending in each appropriations “account”
  - Congress must pass individualized spending bills in all 12 accounts that, as a whole, comply with two basic requirements of sequestration:
    - Make equal cuts to defense and non-defense spending caps
    - Meet BCA requirements for reductions to spending caps (additional $109 billion in new cuts annually)
Sequestration in FY 2014 (actual)

Trouble Brewing...
- Clear from mid-summer that individual appropriations bills were not going to be passed
- House Appropriations Committee said they would spare defense spending from further cuts at expense of non-defense (which would take 20% cut)
- Senate Appropriations Committee approved Labor-HHS-ED bill that increased funding
- House cancelled Labor-HHS-ED markup at last minute and never released text of bill
- U.S. scheduled to hit debt ceiling by October 17th

Shutdown Showdown (again)

Trouble Brewing...
- Argument over funding Affordable Care Act (“Obamacare”)
- House passed CR containing provision that would repeal health care law, fund government through December 15th
  - Despite warnings from moderate Republicans, Senate
- Senate passed stripped-down measure which would fund government through November 15th, including health care law
  - House added requirements/riders back in
- Several more rounds of this “legislative ping pong” later....
Government Shutdown

- Lasted 16 days
- Agencies declared some personnel/activities “essential”
- Essential personnel must report to work, but are not guaranteed pay for shutdown
- Non-essential personnel are furloughed and may not, under penalty of law, conduct work

Non-Essential Activities

- National parks and museums
- Civilian defense contractors
- Bureau of Labor Statistics
- OSHA
- EPA, FEC, IRS, NASA
- Agency press offices and social media

Essential Activities

- TSA, air traffic control
- Active Duty Military
- Social security benefits
- Pell Grant, federal loan, and ESEA Title I staff
- Feeding and care of research and zoo animals
- Congress

Shutdown Impact

- No new funding approved means all programs without leftover appropriations must halt operations
- Department of Education furloughed 95% of staff
- G-5 Grants Management website operational
  - Managed by external contractors
- Title I, ESEA funds went out on schedule
  - October funds come from previous fiscal year (“advance” appropriations)
  - Staff operating disbursement were declared “essential”
- Funds to Head Start, Impact Aid halted
- No new reimbursements available for school nutrition programs
Shutdown Impact

- Programs that can continue to run under a government shutdown fall under three categories:
  - Those declared “essential” to public safety, health, and other interests
  - Those which are self-funded or funded through private donation
  - E.g. the United States Postal Service, Kennedy Center, and parts of the Affordable Care Act launch
- Those which are operating under money that was appropriated in a previous budget year
  - E.g. Title I of ESEA, federal courts, some school nutrition programs, and parts of the Affordable Care Act launch

Shutdown Resolution

- Appropriations bill passed October 17th
- Funds government through January 15th
  - Through “continuing resolution” or “CR”
  - At current (that is, post-sequestration FY 2013) levels
- Created Budget Conference Committee
  - Bipartisan, bicameral committee
  - Tasked with creating new multi-year spending plan
    - May, but does not have to, deal with sequestration
  - No legal/policy authority; recommendations are non-binding
- Raised debt ceiling temporarily

Budget Agreement

- Represented compromise between Democrats and Republicans
- Negotiated by Sen. Patty Murray (D-WA) and Rep. Paul Ryan (R-WI)
  - Set spending targets (budget caps) for FY 2014 and FY 2015 that represented an INCREASE over FY 2013
  - Passed Congress December 17th, 2013
    - Passed baton to House and Senate Appropriations Committees to draft spending legislation which complies with caps, other restrictions

Budget vs. Appropriations

- Budget
  - 35,000 foot view
  - Focus on multi-year spending plans
  - Sets “budget caps” (aka 302(b) caps) on large-scale spending “accounts”
  - But no detail on individual programs
  - Purview of House and Senate Budget Committees
- Appropriations
  - Focus on one fiscal year at a time
  - Follow caps agreed to by Budget Committees/leadership
  - Can spend up to – but not more than – cap
  - Set spending levels for individual federal programs
  - Purview of House and Senate Appropriations Committees
Omnibus 2014

- Massive, $1.1 trillion FY 2014 spending based on agreed-to caps
- Individual appropriations account bills drafted by Appropriations subcommittees, then combined
- Delayed by disagreements over:
  - Funding for Affordable Care Act implementation
  - Abortion restrictions for DC
  - Funding for Early Education programs
- Ultimately passed January 16th, 2014
- Brings funding for non-defense discretionary federal programs nearly – but not quite – back to pre-sequestration FY 2013 levels

Omnibus 2014

- Winners
  - Head Start
  - Increase over FY 2012 (COLA), plus $500 for Early Head Start
  - Early Education
  - New $250 million for competitive Race to the Top Early Education program
  - School Nutrition
  - New $25 million in competitive school equipment grants

- Losers
  - Department of Labor programs (except WIA)
  - Targeted programs (like Rural Education, Advanced Placement, Promise Neighborhoods) – no increase over sequestration
  - President’s Early Education program (Race to the Top instead)
  - President’s Race to the Top proposal (early education instead)
Omnibus 2014 – Policy Riders
- Restates and reinforces Charter School Grant Program Assurances
- Student achievement is the most important factor in renewing a charter
- SIG Changes
  - New grants 5 years
  - Two new models
- USDA Waivers
  - USDA must offer waivers to SFAs who have difficulty/cost issues implementing new snack rules
- IDEA Maintenance of Effort
  - State – no permanent penalty
  - LEA – Congressional intent agrees with ED’s 2012 “Letter to Boundy

What’s Next for Federal Funding?
- Projected budget caps for FY 2014/FY 2015 represent slight increases each year
- Projected future increases in funding to account for inflation (1-2%) – but not more
- BUT this all depends on Congressional action
- Next fiscal debates:
  - Debt ceiling (this spring)
  - FY 2015 funding (this fall)

Policy Legislation

How Fiscal Issues Affect Policy
- Fiscal issues
- Everything else
- No time/energy left in Congress for policy debate
**Farm Bill**
- Omnibus agricultural bill which authorizes some nutrition/commodities programs
- Passed Congress early February after one-year extension in 2012; failed 2013 reauthorization
- Reauthorizes existing feeding programs
- Extends Fresh Fruit and Vegetable program as-is
- Pilot for five states to test integration of frozen, dried, and canned foods
- Creates new farm-to-school pilot in 8 States

**Education technology**
- Several lawmakers have introduced bills focused on Ed Tech/STEM
  - Miller (D-CA): Transforming Education through Technology Act (H.R. 521)
  - Honda (D-CA): Stepping up to STEM Act (H.R. 1089)
- Sen. Rockefeller (D-WV) announced plans in FCC oversight hearing to pursue changes to E-rate connectivity subsidies
- President Obama announced “ConnectED” initiative in 2013
- Announced public-private partnerships in 2014 State of the Union
- Accomplished without Congressional action – through shifts in USF contributions and distribution

FCC Released NPRM in July 2013 asking questions about how to modernize E-Rate, reply comment period closed in October 2013

**Workforce Investment Act**
- Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act (H.R. 803) passed House of Representatives in March of 2013
  - Would “streamline” WIA by combining programs into flexible funding streams
  - Makes changes to formula, composition of WIBs, increases employer role
  - Partisan conflicts led to Democratic walkout during Committee markup
  - Companion bill introduced in Senate in January 2014 by Sen. Tim Scott (R-SC)
  - Senator Patty Murray (D-WA) has circulated “discussion draft” of WIA reauthorization bill
- Unlikely to move forward in current Congress – lack of time/energy

**Child Care and Development Block Grant**
- Last reauthorized in 1996
- Bipartisan reauthorization bill passed in Senate HELP Committee September 18 would:
  - Require States to conduct background checks of employees, including checking state criminal and sex-offender registries and state-based abuse and neglect registries
  - Require States to set aside more money to boost program quality (increasing from 4 percent of total now to 10 percent by 2018)
  - Ensure that program staff are trained in basic safety measures like CPR
  - Require States to check family eligibility for subsidies no more than once a year (focus on continuity of child care)
- No further action in Senate, no action to date in House
Early Education

- Administration plan announced in President’s 2013 State of the Union address
  - $77 billion in subsidized universal pre-K for low/middle-income families over next decade
  - Federal share paid for through increase in tobacco taxes (maybe)
  - States receive funding for adopting certain quality standards
    - Including class size, education level and pay of instructors, State-level inspections and audits, etc.
  - Federal share of costs drops from 90% to 25% over 10-year period
  - Mentioned again in 2014 State of the Union

Draft bills from House and Senate Democrats closely mirror President’s proposal
- Federal funding in exchange for increased State quality standards, smaller class sizes
- Federal share decreasing from 90% to 50% of total cost
- BUT no means of paying for increased federal contribution
- No significant action so far

Early Education: Hurdles Ahead

- In Congress
  - Congressional gridlock generally
  - Specific conflict over expansion of federal role, questions over success of Head Start
  - How to offset cost
- At federal level
  - Need time/capacity to implement program
- At State level
  - Not every State will be able to meet standards right away – or be willing to do so
  - Increasing level of State support needed – will need to evaluate financial investment

ESEA Reauthorization: Senate

- Strengthening America’s Schools Act of 2013 (S. 1094) passed out of Committee on party line vote June 12th
  - Based largely on waivers, October 2011 ESEA legislation
  - Requires States to adopt standards, assessments, performance targets
  - Sets “n-size” at 15 students
  - Increased data/reporting requirements (cross-tabulation)
  - Interventions in priority/focus schools
  - Adds personnel expenditures to comparability calculation
  - States must implement teacher/principal evaluations
- Committee Chairman Tom Harkin (D-IA) says he hopes to get it to the floor, but prospects still murky
ESEA Reauthorization: House

- Student Success Act in (H.R. 5) passed House of Representatives on July 19th
- Similar to bills passed in 112th Congress
- Eliminates AYP, HQT requirements
- States would get to set own performance targets, little federal guidance
- Teacher/principal evaluations required (with student achievement as a significant factor)
- Overall smaller federal role

ESEA Reauthorization: overall

- Few similarities between bills mean conference/agreement unlikely
- Consensus: reauthorization will wait until 2015 or later

Waivers Refresher

- Announced in June of 2011
- Came about following increasing pressure from States requesting some relief from NCLB
- States speak out on unrealistic targets, CCSSO announces intention to seek waivers under waiver provisions in ESEA
- ED compromises with some States (rewrite targets)
- Lack of significant movement on reauthorization in Congress meant ED was only means of relief
Waivers Refresher

- Offers States and districts relief from most onerous provisions of NCLB, including:
  - 2013-2014 deadline for proficiency
  - Requirement to offer choice/SES
  - More flexibility in implementing LEA and school improvement
  - More funding flexibility

In return, States must adopt four “principles for reform”
- College and career-ready standards
  - E.g., Common core
  - Aligned with assessments that measure student growth
- New school accountability systems
  - With “ambitious but achievable” AMOs
- New teacher and principal evaluations
  - Used to inform personnel decisions
  - Multiple measures, including student achievement
  - Reducing duplication and unnecessary burden

What do waivers mean to Congress?
- Good: may push Congress to seek own solution
  - Waivers won’t work for every State
- Bad: may take pressure off Congress
  - Temporary solution buys time for some States, ED
  - BUT takes attention off current reform efforts
- Ugly: create conflict with Congress
  - ED circumventing legislative process with legally questionable waivers?
  - Chairman Kline and Rep. Hunter have asked for justification for conditional waivers, questioned legality

What do waivers mean to ED?
- Work for administration priorities
  - Demonstrate Congressional ineffectiveness/partisanship
  - Encourage States to adopt and implement administration priorities and policies
  - E.g. Common Core, teacher evaluations
  - Frame policy debate on reauthorization
  - Large number of States adopting policy priorities for waivers mean they’re the path of least resistance
  - Influenced 2013 Harkin ESEA bill
Waivers so far
- 42 States and DC have been approved for waivers
  - Many waivers “conditional”
- ED says another 3 States plus PR and BIE have waiver applications under consideration
  - ED working on “rolling” deadline
- Have not applied:
  - Vermont (withdrew waiver application)
  - Montana (officially said “thanks but no thanks”)
  - North Dakota
  - Nebraska
  - California (???)

New “CORE” Waiver
- Sec. Duncan repeatedly said he preferred to work with States
- However, in August 2013, ED granted waiver to nine California school districts known collectively as CORE (California Office to Reform Education)
- No explicit district waiver procedure, so districts used State-level procedure, documents
- Many Governors, chiefs complained this “circumvented” State authority
- Application leaves many questions of administration/accountability unanswered

Additional Waivers: Evaluations
- Teacher evaluations
  - ED announced in June of 2013 that States could postpone using student growth on state tests as a factor in personnel decisions for up to one additional year (until SY 2016-17).
  - Applies only to States that received waivers before summer 2012
  - Arose out of concerns about simultaneously piloting new assessments and trying to incorporate student growth
    - And pressure from CCSSO, other organizations
  - Mixed reviews from members of Congress
    - “waivers from waivers” (Sen. Alexander)
**Additional Waivers: Testing**
- Double-testing
  - Announced in June, but guidance not released until September 2013
  - States can give either their own tests or a consortium field test
    - BUT each student must take a "complete" test in both math and English/language arts
  - States that use the field tests will not be required to report results
    - BUT States and LEAs must continue to report results, including progress toward goals, for students who take the state's own tests
  - States must report participation rates
  - States can request additional "determination flexibility"
    - Allows them to hold their schools' accountability designations steady for a year

**What’s Next for Waivers: Renewals**
- Announced April 2013
- States who submitted applications for waivers (and were approved) in first two windows eligible for renewal for two more years
- Waivers would now go through SY 2015-16
- Applications start January 2014
  - Indicates ED does not have faith in ESEA reauthorization before SY 2015
  - Renewals must report on progress, explain how States will resolve any implementation issues to date, show compliance with "principles for reform"

**What’s Next for Waivers: High Risk**
- Three States’ waivers labeled “high risk” in August 2013:
  - Kansas
  - Oregon
  - Washington
  - All received conditional waivers in 2012
  - All reportedly have to “work on” teacher/principal evaluation systems
- If not in compliance with waivers by end of 2013-14, ED says it will revoke waivers

**What’s Next for Waivers: High Risk**
- Can ED put a waiver on high risk status?
- Critics say no (overstepping already shaky authority)
- ED (and others) say yes
  - Cite EDGAR provision regarding high-risk grantees (34 CFR 80.12), which says a high-risk grantee is one that:
    - Has a history of unsatisfactory performance, or
    - Is not financially stable, or
    - Has a management system which does not meet the management standards set forth in this part, or
    - **Has not conformed to terms and conditions of previous awards**, or
    - Is otherwise not responsible
The next High-risk Grantee?

- Arizona also battling with ED over waiver
- Conditional approval of waiver required:
  - State to increase weighting of high school graduation rates in school rankings from 15 to 20%
  - State to implement use of student growth in teacher/principal evaluations
- Both items on October agenda for State board
- BUT Superintendent, Department not enthusiastic about making changes
- Next logical step for ED if conditions not met is high risk status/revocation of waiver

Will ED Revoke Waivers?

- Hawaii’s Race to the Top Grant
  - Promised to implement teacher and principal evaluations with student growth as condition of grant
  - Problems with evaluations, also assessments, data systems
  - ED put full $75 million RTT grant on high risk status in December 2011, threatened repayment
  - Part of high-risk status related to assessments/data lifted February 2013
  - Contract finally approved in April 2013
  - High risk status cleared
  - Hawaii granted ESEA waiver May 2013

Will ED Revoke Waivers?

- Sec. Duncan says YES!
  - At Council of Chief State School Officers meeting in November 2013, said that would likely “have to revoke” “two or three” by summer 2014
  - In January 2014, revoked $9 million Georgia Race to the Top grant because of disagreement on how student achievement integrated into teacher evaluations

What’s at Stake for ED

- Can’t approve something too far afield from “principles”
  - Prompts worries of unfairness, complaints from other States
- Politically risky to revoke waivers
  - Would send States back to NCLB as written
  - Would provoke backlash from States, Congress
Looking ahead to 2015

Musical Chairs
- Important education-related retirements
  - Sen. Tom Harkin (D-IA)
    - Chairman of Senate Committee on Health, Education, Labor, and Pensions (HELP)
    - Chairman of Appropriations Subcommittee on Labor-HHS-Education
    - Possible replacement: Patty Murray (D-WA)?
  - Rep. George Miller (D-CA)
    - Ranking Member on House Committee on Education and the Workforce
    - Possible replacement: Rob Andrews (D-NJ)?
  - Sen. Jay Rockefeller (D-WV)
    - Chairman of Senate Committee on Commerce, Science, and Transportation

Musical Chairs
- Significant numbers of Representatives/Senators retiring
  - Especially long-term members
- Huge electoral turnover
- Shift in Committee leadership
- New staff, new priorities, new relationships!
- Future TBD

Overall Predictions
- Continued focus on fiscal issues and other must-pass legislation
- Continued gridlock through the end of 2014 makes significant movement on policy legislation unlikely
- After 2014: ??????
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