MEMORANDUM

FROM: **Council of Chief State School Officers**
DATE: **November 24, 2015**
TO: **Chiefs, Deputies, Federal Liaisons, and Communications Directors**
SUBJECT: **Preliminary Summary of the Elementary and Secondary Education Act Agreement/Framework**

On Friday, November 13, House and Senate Committee leaders announced an agreement over a framework for an ESEA reauthorization bill. The House and Senate have appointed conferees.[1] The conference met on November 18–19 and ratified staff recommendations after the adoption of several amendments. Leaders have announced their intent to file a conference report with the House and Senate on November 30 with House action on the report taking place that same week and Senate action the following week.

Below is a summary of the ESEA Agreement/Framework that has been developed based on a review of the staff notes. Legislative language on many of these provisions is not yet available. Until legislative language becomes available and has been reviewed this summary should be viewed as in draft form.

Overall Bill Structure

The agreement maintains the separately authorized large and medium formula grant programs in ESEA, including Title I, Migrant Education, Neglected and Delinquent, Title II (Teacher and Leader Quality), Title III (English Learners), Charter Schools, Indian Education, Impact Aid and others. In contrast to current law, many "small" ESEA programs are not separately authorized and instead would be funded through reservations of other programs/authorizations or their activities are funded through the Student Supports and Academic Achievement Grants authority.

Authorization Period and Authorization Levels - The authorization period for programs under the bill is FY2017 through FY2020 with specific funding levels authorized for each fiscal year. Please see attached document from the Committee for Education Funding.

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[1] House Conferees: Kline (R-MN), Rokita (R-IN), Foxx (R-NC), Roe (R-TN), Thompson (R-PA), Guthrie (R-KY), Messer (R-IN), Russell (R-OK), Curbelo (R-FL), Grothman (R-WI), Scott (D-VA), Fudge (D-OH), Polis (D-CO), Bonamici (D-OR), Davis (D-CA), Wilson (D-FL), and Clark (D-MA). Senate Conferees: Alexander (R-TN), Enzi (R-WY), Burr (R-NC), Isakson (R-GA), Paul (R-KY), Collins (R-ME), Murkowski (R-AK), Kirk (R-IL), Scott (R-SC), Hatch (R-UT), Roberts (R-KS), Cassidy (R-LA), Murray (D-WA), Mikulski (D-MD), Sanders (I-VT), Casey (D-PA), Franken (D-MN), Bennet (D-CO), Whitehouse (D-RI), Baldwin (D-WI), Murphy (D-CT), and Warren (D-MA).

Specific Programs

Below is a summary of the major provisions of certain programs in the Agreement/Framework.

Title I

Standards and Assessments – The agreement maintains requirements in Title I for standards and aligned assessments with assessments for these subjects required for the same grades and subjects as current law (Math and Reading/English Language Arts being assessed in grades 3 through 8 and once in high school and science being assessed once in elementary, middle and high school grade spans). The agreement largely authorizes the "1% regulation" pertaining to assessments of students with significant cognitive disabilities and requires States to provide additional oversight over local educational agencies (LEAs) which exceed this 1% limitation. Additionally, as under current law, assessments of English language proficiency are required for English learners. The agreement also permits locally-selected nationally recognized assessments in lieu of required high school State assessments if the local assessment has been approved by the State and provides comparable, valid and reliable data compared to the State assessments.

The agreement requires LEAs to notify parents annually of the ability to receive any testing participation policy of the State or LEA. In addition, the bill maintains funds for assessment improvement, as well as allows funds for audits of State and local assessments. Lastly the agreement establishes a 7 State Innovative Assessment demonstration program for States to use competency-based assessments.

Title I reservations (SIG and Direct Student Services) – The agreement does not maintain a separately authorized School Improvement Grant (SIG) program. Instead the bill requires States to reserve 7% of Title I funds for SIG-like activities, with no specific models or improvement activities mandated. In addition, the bill permits States to reserve and additional 3% for direct student services. States provide grants to LEAs for direct student services that include covering the costs of enrollment in courses not otherwise available at a student's school, credit recovery, Advanced Placement (including reimbursing low-income student test fees), tutoring services and transportation for public school choice.

Accountability – The agreement replaces ESEA's current adequate yearly progress system with a State-defined index system with certain federally-required components.

Goals - Under this system, States must establish "ambitious State-designed long term goals" with measurements of interim progress for:

(1) Improved academic achievement on State assessments.
(2) Graduation rates.
(3) Progress in achieving English language proficiency for English learners.

State Index - The State-defined index must include the following indicators:

(1) Academic Indicators
    a. Academic achievement based on the annual assessments and on the State's goals.
    b. A measure of student growth or other statewide academic indicator for elementary and middle schools.
    c. Graduation rates for high schools based on the State's goals.
    d. English proficiency based on the State's goals.
(2) Measure of School Quality and Student Success
    a. At least one measure of school quality or student success (several examples are listed including student and educator engagement, access and completion of advanced coursework, postsecondary readiness, school climate and safety, and another State selected indicator).
(3) Participation
    a. 95% participation by all students and subgroups of students on State-required assessments.

Based on the performance of schools and subgroups in schools on the indicators described above, States are required to "meaningfully differentiate" public schools in the State. "Substantial weight" is required to be given the Academic Indicators (described above) and these 4 indicators must, in the aggregate, have greater weight in the differentiation process than any Measures of School Quality or Student Success (described above). The weight provided to the Participation Indicator (described above) is solely determined by the State and may be less than or greater than the weight of any of the other indicators.

Identification for Comprehensive Support and Improvement – At least once every 3 years, States must identify schools for "comprehensive support and improvement." States are also required to set exit criteria for schools that are identified to exit such status. Schools that meet the following criteria are required to be identified:

(1) The 5% lowest performing in the State (as determined by the index and differentiation process).
(2) High schools that graduate less than two-thirds of their students.
(3) Schools for which a subgroup is consistently underperforming in the same manner as a school under the previous 2 categories for a State-determined number of years.

LEAs must develop comprehensive support and improvement plans for schools identified. Plans are required to include evidence-based interventions, identify resource inequities, be approved by the school, LEA and State Educational Agency (SEA), and be periodically monitored and reviewed by the SEA. LEAs may provide students with the option to transfer to another public school, including paying for transportation costs (up to 5% of their Title I allocation). After a state-determined period of years (not to exceed 4 years) States must take more rigorous state determined action if a school identified for comprehensive support and intervention has not met the exit criteria. Identification for comprehensive support and improvement will begin with the 2017-2018 academic year.

Notification of Targeted Support and Improvement - In addition to identification for comprehensive support and improvement, the State must annually notify LEAs with schools which have “consistently underperforming” subgroups. Schools which are notified must develop and implement a “targeted support and improvement plan.” These plans must include evidence-based interventions and be approved and monitored by the LEA. In addition, if the plan is not successfully implemented after a LEA determined number of years, additional action must take place. Schools for which plans are developed where subgroup performance would lead to identification for comprehensive support and improvement must also identify resource inequities to be addressed through plan implementation. As with other schools which are identified, notification for target support and improvement will begin with the 2017-2018 academic year.

Secretarial Prohibitions -The agreement includes a number of prohibitions on the Secretary’s authority. Among other provisions, the agreement will include language which specifically prohibits the Secretary from promulgating rules on the accountability system that is inconsistent or out of scope with statutory requirements, or adds new criteria through regulations that is inconsistent or out of scope. The Secretary is also not permitted to condition plan approval, revisions to a plan, or the approval of a waiver request by adding requirements that are inconsistent or out of scope with the statutory requirements. Additionally, the Secretary is specifically prohibited from prescribing:

(1) Specific academic assessments or assessment items, including the Common Core.
(2) In the accountability system: specific long term goals, indicators, weights of indicators, methodology, school support and improvement strategies, and exit criteria.
(3) Any aspect or parameter of a teacher, principal or other school leader evaluation system. Indicators or specific measure of teacher, principal or other school leader effectiveness.

The Secretary is not permitted to issue non-regulatory guidance that provides a strictly limited or exhaustive list to illustrate successful implementation or purports to be legally binding.

Lastly, the Secretary is not permitted to define terms in the agreement through regulation that are inconsistent or out of scope with the statutory requirements or collect any data except from existing Federal State and local reporting requirements.

Report Cards - The agreement largely keeps the current law structure of State and local report cards with changes to the specific items that must be reported. New reporting requirements or items include:

(1) A description of the State’s accountability system, including information on its elements and system of differentiating schools.
(2) Certain data collected through the Civil Rights Data Collection.
(3) Expanded reporting on assessment and graduation rates by foster youth and homeless students.
(4) The professional qualifications of teachers (the bill eliminates requirements for and reporting on highly qualified teachers).

Title I formula – The agreement does not include the Title I formula changes of the Senate bill and largely keeps existing Title I formula provisions with technical changes and changes to allocations for the outlying areas.

Flexibility for Equitable Per-Pupil Funding – The agreement includes a modified version of the Senate's Weighted Student Funding Flexibility Pilot Program. Under the agreement, up to 50 LEAs may enter into demonstration agreements with the Secretary to consolidate Federal, State and local education funding for the purpose of allocating significant funds to the school level and substantially more funding for English learners and students from low-income families.

Title II

The agreement maintains a separate Title II, Part A Teacher and School Leaders State formula grant that largely mirrors the structure of current law (Federal to State and State to local formula grants). The agreement does not adopt the House provisions repealing the Teacher Quality Partnerships program under the Higher Education Act. The agreement does change the Title II, Part A state grant formula to increase the poverty factor in this formula over a multiyear period. The agreement permits the SEA to reserve 3% of their State grant for principal and other school leader support grants to LEAs.

The agreement funds several activities under a National activities part. These activities are funded through reservations rather than separate authorizations of appropriations. These include:

1. Teacher and School Leader Incentive Program (currently referred to as the Teacher Incentive Fund)
2. Literacy Education For All, Results For the Nation (LEARN) – which includes an optional reservation for Effective School Library programs
3. American History and Civics Education
4. Programs of National Significance, which includes 4 sub reservations for the following:
    a. Supporting Effective Educator Engagement.
    b. School Leader Recruitment and Support.
    c. Technical Assistance and National Evaluation.
    d. STEM Master Teacher Corps (also enables funds to be used for grants to SEAs and nonprofit organizations for STEM professional development).

Title IV

Title IV of the agreement contains the most significant restructuring of individual ESEA programs, chief of which is the Student Supports and Academic Achievement Grants authority. Below is a description of the major elements of this Title and how it impacts existing ESEA programs.

Student Supports and Academic Grants – the bill authorizes a State grant program for a wide range of activities and purposes. States receive formula grants and allocate 95% to LEAs and reserve 5% for State level activities. Among others, State level activities include:

(1) Advanced Placement and International Baccalaureate test fee reimbursement as well as support for dual enrollment and early college high school programs (there is no separately authorized Advanced Placement program under the agreement, unlike current law).
(2) Geography, civics and well-rounded activities
(3) Fostering safe, healthy and drug free environments.
(4) Technology related activities.

LEAs receiving grants must do a needs assessment and are expected to fund activities in each of three categories:

(1) Well-Rounded (at least 20% of funds), which include AP and IB test fee reimbursement, STEM, arts and computer science.
(2) Healthy Students (at least 20% of funds).
(3) Technology (at least one activity, and a limitation on the purchase of technology infrastructure).

21st Century Community Learning Centers – The agreement authorizes the 21st Century Community Learning Centers program as a stand-alone program.

Family Engagement – The agreement authorizes the Statewide Family Engagement Centers program (Parent Information and Resource Centers under current law).

National Reservations – Title IV includes a separately authorized part (referred to as Title IV, Part F in the notes) with multiple reservations for what are currently separately authorized programs under current law. These reservations include:

(1) Gifted and Talented – the reserves funds for a "Jacob K. Javitz Gifted and Talented Students Education Program."
(2) Education Innovation and Research – the agreement reserves funds for an Education Innovation and Research authority (this is a new version of the current Investing in Innovation program - i3).
(3) Ready to Learn Television – the agreement reserves funds for grants for Ready to Learn Television activities.
(4) Assistance for Arts Education – the agreement reserves funds for Arts education activities.
(5) Full Service Community Schools – the agreement reserves funds for full service community schools' activities.
(6) Promise Neighborhoods – the agreement reserves funds to make grants for activities funded under the Promise Neighborhoods program.

The agreement does not separately authorize or reserve funds for the current Physical Education and Elementary and Secondary School Counseling programs.

Charter Schools – The bill maintains the Charter Schools Program as a stand-alone program under Title IV, Part C. Funds are authorized to support new charter school start-ups, the replication and expansion of high-quality charter models (which have previously been funded through appropriations) and to support facilities financing. The agreement includes provisions to increase charter school accountability and prioritizes funding for charter models with diverse

student bodies, schools identified for improvement, secondary school activities and efforts that focus on dropout recovery and academic reentry.

Preschool Development Grants – The agreement separately authorizes a preschool development grants program that is funded through the Department of Health and Human Services (HHS), but is jointly administered by HHS and the Secretary of Education.

Governor Consultation – The agreement requires SEAs to consult with their Governor on the development of certain plans under ESEA, including those required under Titles I and II. The Governor of a State is provided 30 days to sign off on these plans. If the Governor does not sign off during this time period, the SEA is permitted to submit the plan to the Secretary for approval.

Other Provisions

The agreement reauthorizes the Title III, English Language Learners State grant program, Magnet Schools programs, Indian Education, Impact Aid and Title VII (Homeless Education) of the McKinney-Vento Act.