

Education TURNKEY Electronic Distribution, Inc.

256 North Washington Street
Falls Church, Virginia 22046-4549
(703) 536-2310
Fax (703) 536-3225

MEMORANDUM

DATE: April 15, 2011
TO: TechMIS Subscribers
FROM: Charles Blaschke and Blair Curry
SUBJ: Final FY 2011 Education Budget and Likely Scenario for ESEA Reauthorization

Enclosed is a brief preliminary report on the final FY 2011 appropriations passed yesterday by Congress and signed by the President. Title I and IDEA will be level-funded and Race to the Top and i³ will receive new funding for additional competitive grants. Once USED posts the specific program levels based on its “interpretations,” we will conduct a more detailed analysis and provide it to subscribers.

Also included is a Special Report on the most likely scenario for how some type of ESEA “reauthorization” will likely occur this year. During the recent SIIA forum, all of the policy pundits on a panel, which included Andy Rotherham, Mike Petrilli, and Alyson Klein, felt that a combination of “fix-it” amendments and regulatory relief will have to occur. We have identified the various fix-it type amendments that have general bipartisan support thus far and the various “regulatory relief” areas which could be addressed by USED. Districts, as well as subscribers, should feel the impact much more quickly if the regulatory relief route is followed, rather than a comprehensive reauthorization which will require an 18-month or so period of regulation development and comment before final publication.

If you have any questions, please contact me directly.

Special Report:
**FY 2011 Education Budget Agreement Reached With Title I and IDEA
Being Level-Funded and Obama/Duncan Priorities, Race to the Top
and i³, Receiving Funds for New Rounds of Grant Competitions**

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

Prepared by:
Education TURNKEY Systems, Inc.
256 North Washington Street
Falls Church, Virginia 22046-4549
(703) 536-2310 / (703) 536-3225 FAX

April 15, 2011

Approved by both the House and Senate and signed by the President yesterday, the eleventh hour FY 2011 appropriations agreement on April 8th would, for the most part, level-fund Title I and IDEA, while some of the President's priorities, including Race to the Top, i³, and Promise Neighborhoods, would receive additional funds for new competitions. However, the Committee for Education Funding (CEF) noted in its summary of cuts, eliminations, increases, and policy changes, "until the Department releases its table showing the official interpretation of the CR, the numbers are subject to change and may not be complete." Even though total USED funding programs are about \$1.3 billion less than the FY 2010 appropriations level, Joel Packer, CEF's Executive Director, is quoted in Education Daily (April 13th) as stating, "Compared to H.R. 1, this is far superior, but compared to President Obama's FY 2011 budget request, the agreement is significantly worse."

Even though Title I was level-funded, it is not clear how much will be "advanced funding" with the first amount released in July, and the remainder in October. It remains to be seen whether the proportional amounts for the four formula components (e.g., basic, concentration, targeted, and incentive) parallel those amounts for this year's allocation. Some observers have speculated that the full Conference Report, when finalized, might also attempt to include language that attempts to "fix" or provide "regulatory relief" for some of the NCLB provisions in Title I which most congressional leaders agree should be made. IDEA would be almost level-funded at \$12.5 billion. However, a 0.2 percent across-the-board cut would apply to all non-defense programs, including Title I and IDEA (e.g., \$25 million reductions for IDEA).

The Administration's flagship priorities received additional funding. Race to the Top will have \$700 million for a new round of competitive grants, most likely to states, not to LEAs, as President Obama had proposed last year. Under Race to the Top, there would be new provisions to improve "early childhood care and education" which appears to be similar to the proposed, but

not funded, Early Childhood Challenge Grant Program. One of the objectives is to “design and implement an integrated system of high-quality, early learning programs and services.” This component could be a competitive priority with an assigned set of additional points or could be used in negotiating with one of the higher-ranked Round 2 State Competitive Grant applicants which was not funded, but which clearly addressed early childhood education in their proposals. The i³ program would receive an additional \$150 million for a second round of competition. Earlier this year, USED published proposed changes in the i³ program which would allow the winner from the first i³ round to compete once again for a second round and would give the Secretary much more discretion in deciding which of the three categories (i.e., Scale-up, Validation, Development) of grants in which to put any new funds for competitive rounds of funding. Whether private sector firms could participate as “official providers” or only as “other providers” still remains an issue. The Promise Neighborhood program would receive an additional \$20 million, totaling \$30 million, which would likely be used to implement some of the existing 20-plus planning grants, as well as perhaps a second round of planning grant competitions. This too is unclear. Another program that was level-funded was the Teacher Incentive Fund at \$400 million.

In addition to education programs which were cut or eliminated in previous continuing resolutions, other cuts were included in the final agreement including:

- School Improvement Grants reduced by \$10 million from \$546 million; however, an amendment passed in the first Continuing Resolution last Fall could allow even more SIG funding to be rescinded, perhaps in the FY 2012 or later budget.
- Striving Readers for which \$250 million in FY 2011 funds were eliminated; but unspent \$189 million in FY 2010 funds which are to be used to fund the ongoing state competition (closing May 8th), was reinstated.
- Title II Teacher Quality which would receive a small decrease as a result of a set-aside of about \$290 million for competitive grants which could conceivably fund some of the Administration’s eliminated earmarks, such as Teach for America.
- TRIO and Gear-Up received a small total reduction of \$45 million.
- Safe School and Citizenship Education would receive a cut of only \$104 million, even though the Administration had proposed to reduce funding by \$341 million.
- Career and technical education would receive about \$950 million which is about a \$140 million cut from last year.
- English Language Acquisition State Grants was reduced by \$15 million.
- Teaching of Traditional American History was cut by \$73 million.

A large number of programs were eliminated, including:

- Education Technology State Grants (E2T2) (\$100 million)
- Even Start (\$66.5 million)
- Teach for America earmark (\$18 million)
- Smaller Learning Communities (\$88 million)

As Jennifer Cohen noted in her blog *Ed Money Watch*, Pell grant funding would be provided \$23

billion through September 30th with a maximum grant of \$5,550 per student; however, the bill eliminated the “summer” or “year-round” program in order to reduce costs to ensure that the \$23 billion would be adequate to fund the maximum grant. The elimination of these two components could save as much as \$35 billion over ten years. As Cohen also notes, “The major programs, including Title I, Part A, Individuals with Disabilities Education Act, Part B, and Pell Grants remain unscathed and the Administration sealed a major victory with funding for Race to the Top and Investing in Innovation.” In addition, the final language in the Conference Report could also result in policy changes. Former Chairman for the House Appropriations Committee David Obey was a master of using appropriations process to insert provisions which changed policy. One such change reported by the Associated Press in Education Week (April 12th) was that EduJobs provisions were changed to remove “a requirement that Republican Governor Rick Perry use the funds to supplement existing school spending rather than just replace state funds in order to balance the budget.” At stake here is \$830 million in EduJobs funding which, under the previous policy, would have made it difficult for the Governor to use such funds for any purpose other than retaining teacher jobs as intended. It is not clear what the outcome will be and whether these funds would be used to address other areas created by the \$8 billion gap in K-12 funding over the next two years in Texas.

Once the final report language has been published and USED interpretations of program-by-program funding impacts are made available, a more detailed analysis and report will be provided to TechMIS clients. A summary of the education budget impact on many programs is available at the House Appropriations Committee website: <http://appropriations.house.gov> or <http://www.cef.org/>

Special Report:
**Possible Scenario for ESEA “Reauthorization” This Year Emerging
Along with Key Issues Which Are Likely to be Addressed During
Different Phases, Especially the One Focusing on “Regulatory Relief”**

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

Prepared by:
Education TURNKEY Systems, Inc.
256 North Washington Street
Falls Church, Virginia 22046-4549
(703) 536-2310 / (703) 536-3225 FAX

April 15, 2011

A possible scenario on how the ESEA “Reauthorization” process will occur this year appears to be unfolding, and a number of key issues will likely be addressed in different phases if full “comprehensive reauthorization” does not occur. Without question, the Senate is moving much more quickly than the House, hoping to have a comprehensive ESEA reauthorization markup bill late this spring, with passage by August in accordance with President Obama’s statement to have a reauthorization enacted before school begins in September. Based on comments by Senator Harkin and HELP Committee staffers, there appear to be a consensus, at least within the Senate leadership, and bipartisan support for: replacing static AYP calculations with student growth indicators; targeting more resources at the persistently lowest-performing schools to adopt one of the four SIG models; and continuing disaggregation of student data by subgroups, with the major focus on removing achievement gaps between such groups. Extending learning time and a greater emphasis on “a well-rounded” education, similar to elements of the President’s FY 2011 Blueprint, has support. There appears to be less consensus on how to implement teacher evaluations for accountability purposes and use of Federal funds to leverage such changes and support for a new Early Childhood Challenge program.

While the passage, even by the full Senate, of a comprehensive reauthorization package is not likely, Senator Alexander and ranking HELP Committee Republican Senator Enzi have proposed a fallback “plan B” with about nine areas in which NCLB fix-it amendments would be considered. Shortly after news of the Alexander/Enzi fix-it legislation was made known (see February TechMIS [Washington Update](#)), eleven moderate Democratic and Republican Senators outlined their “principles” for ESEA reauthorization which are generally similar to the FY 2011 proposed Blueprint. According to Frank Wolfe, [Education Daily](#) reporter, who was among the first to obtain information on the Alexander/Enzi fix-it legislation, “The principles and policies advocated by the [eleven moderate] senators seem to adhere to a list of nine areas for fixing NCLB discussed last month by Senator Mike Enzi R-Wyo., the ranking member of the Senate HELP Committee, and Senator Lamar Alexander, D-Tenn., a key player in the discussions on

ESEA reauthorization.” Several of the principles which were similar to the Alexander/Enzi fix-it included using “growth” instead of the current static AYP calculations; using stringent interventions with lowest-performing schools and rewarding higher-performing ones; using multiple measures to assess teacher effectiveness; and continuing the Race to the Top and i³ initiatives. Another principle would change Title I comparability requirements to ensure the amount of teachers’ salaries and other local/state-funded resources among low- and high-poverty schools are the same which will require district accounting and budgeting practices to change significantly (see new Center for American Progress report at: http://www.americanprogress.org/issues/2011/03/pdf/school_budget.pdf) Senator Mike Bennet (D-CO) and Senator Kay Hagan (D-NC) are leading the effort for moderate Democrats which also include Senator Mark Warner (D-VA) and Senator Mary Landrieu (D-LA).

If a comprehensive reauthorization does not happen, then passage of at least some of the fix-it amendments to remove and/or otherwise modify some of the agreed-upon NCLB flaws which Secretary Duncan and President Obama have identified would occur. In March, Secretary Duncan called for a hastened effort on the part of Congress to reauthorize ESEA, through fix-it legislation arguing that next year, under NCLB’s AYP provisions and calculations, 82 percent of schools in the country could be identified for improvement for missing AYP.

In the event that some of the above generally agreed-upon changes are not made through the passage of fix-it legislation, then the “regulatory relief” phase will occur. Senator Bennet and Senator Alexander recently announced creation of a Task Force to examine and eliminate, where appropriate, education regulations, particularly in the assessment area, which are barriers to increasing student performance and other education goals. The joint announcement of March 17th stated, “The task force will analyze the findings to make recommendations for policymakers to remove red tape, reduce regulatory compliance while ensuring important regulations remain in place, and improve the quality of assessment systems.” One of the major duties of the Task Force, which would be created by a bipartisan bill, would be to “examine federal, state, and local regulations to identify unnecessary, redundant, or conflicting rules and regulations imposed on public schools to streamline administration and allow local education leaders to focus on improving student achievement instead of complying with meaningless recommendations.” In one specific area, the Task Force would “investigate how Federal, state, and local interpretations of laws and regulations create additional or unnecessary burden and are used as rationale for imposing requirements that are not actually mandated by law.”

While testing practices would be a major initial focus of the Task Force, its mandate is broad enough to cover virtually any of the Title I regulations, sets of guidance, letters of interpretation, etc. where unintended consequences have occurred due to bureaucratic barriers, red tape, and interpretations. As reported in *Politics K-12* blog on Education Week, Senator Bennet pointed to specific areas in which local time, dollars, and energies are spent on compliance rather than on teaching and learning. He argued that districts might be afraid to try new strategies because of the uncertainty that certain Federal funds are allowed to be spent on them. Bennet said that it would be very difficult for districts to spend Title I money on Response-to-Intervention as an example, arguing, “There is no reason for that.” He said, “That makes it harder to deliver results

for kids.” As a first step, Colorado and Tennessee are involving the states’ Senators, Governors and Secretary Duncan as co-chairs of a working group to begin in Colorado and Tennessee. Senator Bennet’s announcement states, “The working group will follow the same examination and reporting guidelines as the national task force looking specifically at Colorado and Tennessee schools.” Formal Task Force members would include governors, state legislators, superintendents, teachers, principals, assessment experts, and others who have a broad range of knowledge, expertise and responsibility for education.

During the last several months, discussions have been held with lobbyists, government relations directors, and members of AASA, NSBA, Council of the Great City Schools, and Council of Chief State School Officers to identify specific NCLB or other provisions in the Law and/or regulations, formal guidance and non-regulatory guidance which will likely be the priority foci of fix-it amendments and/or so-called “regulatory relief” through waivers or reinterpretations of current regulations and guidance. Below we identify some of these priority areas and the implications for many TechMIS subscribers and other providers of services.

Among the top issues is Response-to-Intervention (RTI) which Senator Bennet has singled out as having a lack of clear guidance or having dysfunctional or confusing guidance regarding the conditions under which certain components of a RTI approach could be funded through the use of ESEA Titles I, II, and III, School Improvement Grants and IDEA dollars in different types of settings. This issue was addressed in our February 15th TechMIS Special Report and is a priority concern of Congressional leaders such as Senator Alexander and his staff as previously reported over the last two years. Either a fix-it amendment and/or regulatory relief would likely provide the necessary flexibility to use multiple funding sources to support rapid expansion of RTI frameworks not only in Title I and IDEA programs, but also in general education. As noted in the February 15th Special Report, Secretary Alexa Posny recently offered her personal opinion that, if certain districts do a good job, the existing 15 percent cap on the use of IDEA/special education funds in districts with significant disproportionality for CEIS/RTI should be lifted. In its March 2011 briefing document for the Council of the Great City Schools Annual Legislative Conference, the Council recommended that a new special rule in ESEA general positions be added “to allow for the coordination, integration, and consolidation of funding for Response to Intervention (RTI) activities with funds received under ESEA, IDEA, or other federal formula grant programs, and state and local funds, notwithstanding any federal fiscal or accounting restrictions such as supplement not supplant, maintenance of effort, personnel activity reports or cost allocation requirements.”

One simple regulatory relief solution which we recently personally recommended to Secretary Duncan would be to allow any district identified as having significant disproportionality -- and thus having to set aside 15 percent of IDEA funds for CEIS/RTI -- to designate any school to which the 15 percent set-aside funding is allocated as a Title I schoolwide program which would be exempted from “supplement not supplant” and some other reporting requirements on the use of funds. This would encourage the use of multiple Federal funds which would be consolidated in order to implement RTI in a “coordinated, comprehensive” manner; it would also reduce district anxieties regarding Federal audits on potential misuse of funds. This could be

implemented through a waiver process similar to the one included in the most recent School Improvement Grant guidance which allows a district to designate an eligible Tier I or Tier II school for SIG grants as a schoolwide program to request a waiver in order to allow the school to implement one of the four prescribed SIG intervention models in a “coordinated and comprehensive” manner.

Another way to expand the use of RTI approaches through regulatory relief would be to nullify the USED policy that does not allow a district to expand RTI use in phases if that district is in a state which requires the use of RTI; in such states, districts must ensure that all staff in all schools have been trained and have the capacity to implement RTI at one time rather than in stages.

Most education associations and advocacy groups also have called for removal of many of the NCLB set-asides for SES, parent choice, professional development, and other purposes and/or a “reinterpretation” of the Title I regulations published under the Bush Administration. The CGCS Legislative Conference briefing document argued that set-asides constrain local flexibility and often limit the amount of funds that reach the local level. It noted that the ESEA Title I program provides the “prime example of statutory set-asides” as it authorized up to 56 percent of Title I Part A formula grant funds allocated under NCLB which could be required for use for various set-asides for certain districts.

One immediate way to provide some regulatory relief would be to reexamine the SES statutory language. Shortly after Title I regulations were first published after NCLB’s passage in 2002, the Council argued, for example, that the statute called for up to five percent of a district’s Title I allocation to be allocated for SES and up to 15 percent be set aside for “parent choice” for schools identified for improvement for two consecutive years. The regulations, however, called for 20 percent being set aside for a combination of SES and parent choice. The Council also argued that, from the onset, NCLB statutes did not automatically preclude a district identified for improvement from operating its own SES program as long as it has a “demonstrated record of performance in increasing student achievement.” In 2009, Secretary Duncan called for nullification of this regulatory interpretation by the Bush Administration and, in the mean time, allowed states to request waivers to allow such “identified” districts to provide their own SES programs. SEAs were also allowed to request waivers to exempt the 20 percent SES parent choice set-aside from the Title I ARRA portion; the vast majority of states did request and receive such waivers. If the current regulations calling for a 20 percent SES parent choice set-aside are nullified, then the same waiver process could be used to become effective immediately, while “new regulations” would have to go through a time-consuming comment process.

AASA has called for a modification in SES regulations which would allow SES set-aside funds that are unspent after all SES and choice needs are met to be reprogrammed and returned to the district’s general Title I budget rather than having such funds returned to the Federal Treasury. In a letter to Secretary Duncan last year, AASA stated, “It is a simple release of funds, at no additional cost to the federal Government, and a double-bonus for districts, providing both funding flexibility and an additional shot of revenue to address other Title I-related concerns.”

AASA also called for regulations to be changed to allow “LEAs to use their own teachers as SES providers [which] gives budgetary flexibility, allowing SES dollars to go further and serving as a source of school community and continuity.” At a general level, if the set-aside for SES were to be capped at five percent instead of 20 percent, it is likely that about \$2 billion of Title I funds would be exempted from the set-aside and freed up for use in regular Title I programs. Most studies have shown that, over the last several years, only a small portion of the set-aside for parent choice has been spent for that purpose; however, it should be noted that any fix-it legislation would likely still contain the larger allowance for parent choice until all parent choice demands are met.

As AASA noted in its October 2010 letter to Secretary Duncan, “Under current law, it is possible for one student to count for/against a school district more than one time. That is, an LEA could have a child with special needs who also happens to be an English Language learner and from a high poverty family. If this child fails to meet proficiency, the single non-proficient score actually counts against the school district in all three categories.” AASA argues that regulations could be changed to prioritize categories such that LEAs would account for the student in the highest priority category identified by USED and not the other two categories.

AASA also pointed to relief from the requirement that all students be tested each year. If regulations were revised to allow testing of a sample of students in grades 3-8 and once in high school, in math and English, as currently used in the NAEP model, dollars would be saved. It argued that the results would be reliable in providing data necessary for measuring student sub-group performance and school accountability.

In its briefing document, the Council of the Great City Schools also called for the removal of the percentage limitation and the corrective actions restriction from transferability provisions which were addressed in our March 15th TechMIS Special Report on Secretary Duncan’s letter to governors on the use of transferability provisions. While up to 50 percent of funds from most Federal programs can be transferred into many Title I schools, if that school/district is in corrective action or restructuring, the limitation is 30 percent which the previous Administration apparently thought would result in dollars “being wasted.” Several years ago, during the Council’s legislative meeting, Jefferson County, Kentucky pleaded with Secretary Spellings to allow more than 30 percent of other Federal funds to be transferred into several lowest-performing schools in restructuring to implement a comprehensive implementation; this was not allowed. Conversely, the current Administration’s proposed Blueprint would place its highest priority on targeting Federal Title I and other resources into the lowest-achieving schools, the vast majority which would be in districts/schools facing corrective action.