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MEMORANDUM

DATE: August 19, 2010

TO: TechMIS Subscribers

FROM: Charles Blaschke and Blair Curry

SUBJ: $10 Billion Ed Jobs Initiative and Implications

Attached is a Special Report on the $10 billion Ed Jobs Initiative recently passed by Congress and highlights of the "initial guidance" which reflects some of the Administration's priorities implicit in the Law. Most of the implications are positive for TechMIS subscribers, as several billion dollars of local and other funds which otherwise would have been used to attempt to retain teacher jobs will be freed-up possibly to purchase products and services. Also included is an attachment on final district Title I allocations for this year which could have significant implications in those states which decide to distribute Ed Jobs funds in accordance with Title I district allocations as opposed to using the regular state K-8 formula.

Please call Blair or Charles if you have any questions.

Special Report:
$10 Billion Ed Jobs Initiative Passed by Congress: An Update on Offsets, Guidance, and Implications

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

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August 19, 2010

On August 10th, the President signed the Ed Jobs Initiative which unexpectedly passed the Senate by a 61 to 38 margin and, then, the following week by the House which was recalled from summer recess to vote. The $10 billion law is designed to help districts retain or rehire approximately 160,000 teachers and school-level staff thus "freeing up" a large amount of local and other funds which would have been used to attempt to retain teaching staff. Some of these "freed-up" funds could be used to purchase products and services. In addition, $16.1 billion was included to extend state Medicaid reimbursement for staff salaries through June of next year which could allow states to free-up funds to be used for other Medicaid purposes. It is likely some of the freed up funding could be used by districts to file claims and be reimbursed for related services for eligible special education students under the S-CHIP program; such Medicaid reimbursements have been used in the past for purchasing about five percent of all instructional software used in special education programs. Below we provide the highlights of the Ed Jobs Initiative, recent "initial" guidance on how the funds can be used, the likely implementation process, as well as problems and implications.

One of the concerns regarding the Ed Jobs component of Public Law 111-226, which we addressed in previous TechMIS reports and updates (See July 2010 Washington Update and August 5 Special Report), were the nature of the budget "offsets" which would be used to cover the $10 billion staff retention costs, some of which could have direct implications for many TechMIS subscribers. As details are beginning to emerge, it appears that the $50 million offset under the Striving Readers Program would reduce the funds in the FY 2010 competitive funding cycle and the number of "new" grantees to be funded. This is also likely to be the process followed for the $10 million rescission in the Ready to Teach program. Outside USED, a rescission of $302 million in the Department of Commerce's Broadband Technology Opportunities Program within the National Telecommunications and Information Administration will occur, along with several other ARRA energy technology initiatives that were high priorities of House Speaker Nancy Pelosi. Within the Department of Agriculture is a $122 million rescission under the Rural Development Initiative, some of which would have been used to develop technology infrastructure. Most of the other offsets came from closing tax loopholes for international corporations and ending increases in food stamp recipient benefits one year earlier in 2014.

While the offsets are included in the final bill, the issue may not be totally resolved. During the debate, ranking House Appropriations Committee member Jerry Lewis (R-CA) warned in a floor debate that during a "lame duck" session after the mid-term elections, the Democrats may revisit the offsets by increasing funds in certain programs; also, as reported by the Associated Press, Representative Chris VanHollen (D-MD), a member of the House Democratic Leadership, reportedly stated, "I would prefer other offsets. We do have additional time to identify other offsets." Committee Chairman David Obey expressed similar concerns regarding the food stamps offsets. Many observers believe that the offset issues may be addressed even earlier after Congress returns in September.

Published on August 13th, the Initial Guidance, following the statute and "intents" of various versions of the Bill as it evolved from the House version originally passed on June 15th, emphasizes several points. While the initial intent was to require that all funds be obligated by September 30, 2011, the Guidance clarifies that, under the so-called Tydings Amendment which trumps the language in Ed Jobs, if any LEA has funds remaining after the upcoming school year, it can carry over those funds for allowable uses through September 30, 2012. Governors must submit their applications to USED by September 9, 2010, with USED expecting to allocate funds within two weeks after governors' submission of an approvable application.   If a governor does not submit an application, USED may provide the state's allocation to another entity within the state or reallocate the state's funding to another state.

The guidance covers the three alternative ways for a state to demonstrate "maintenance of effort"; moreover, "The State will not use funds under the Ed Jobs program, directly or indirectly, to: (a) establish, restore, or supplement a rainy-day fund; (b) supplant State funds in a manner that has the effect of establishing, restoring, or supplementing a rainy-day fund; (c) reduce or retire debt obligations incurred by the State; or (d) supplant State funds in a manner that has the effect of reducing or retiring debt obligations incurred by the State." Approved states must make awards to LEAs on a "timely basis," using either the state's primary elementary and secondary education funding formula as identified under the approved Phase II State Fiscal Stabilization Fund (SFSF) program or on the basis of each LEA's relative share of funds under Title I for the most recent fiscal year for which data are available. Final district Title I allocations have been posted on the USED website (See related attachment). While most states are likely to use the formula by which it distributed prior SFSF funds, several states, including Pennsylvania, are reportedly seriously considering using the Title I formula for allocations. If a number of states use the Title I formula for district allocations, the large, high-poverty, urban districts will benefit most. If a state's SFSF Phase II application has been approved by USED, LEA applications for SFSF funds will be followed. Governors cannot require LEAs to submit another time-consuming application to receive Ed Jobs funding.

The guidance reiterates that Ed Jobs funds can be used "to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services." The August 13th guidance emphasizes, "If a State's LEAs do not need funds to recall or rehire former employees, they may use the funds for activities such as paying the salaries and benefits for teachers who provide instructional services in after-school and extended learning programs." In states such as North Dakota, there may be new opportunities for such expanded after-school or extended learning time initiatives.

The new guidance makes it clear that an LEA may use Ed Jobs funds "to pay the salaries of teachers and other employees who provide school-level education and related services." School-level employees include principals, academic coaches, trainers, aides, secretaries, information technology personnel, athletic coaches, maintenance workers, and cafeteria workers, among others. LEAs cannot use Ed Jobs funds to cover non-school-level administrative expenses such as those related to superintendents' offices, Boards of Education, and LEA-level administrative employees. Prohibited activities also include "payment of expenditures for fiscal services, LEA program planners and researchers, and human resource services." Nor can Ed Jobs funds be used to pay for contractual school-level services by individuals who are not employees of the LEA, thus precluding Ed Jobs funds from being used to pay directly for third-party vendor professional development and related support services. However, the phrase "compensation and benefits and other expenses, such as support services" as broadly defined, would allow performance bonuses, tuition reimbursement, transportation subsidies, and reimbursement for childcare expenses, among other support service expenditures. Opportunities for groups providing professional development may exist if such professional development were available on a tuition basis.

The law's language allows Ed Jobs funds to be used by one LEA to contract with another LEA for the purposes of providing services. A possible opportunity for professional development third parties might be to contract with an "education service agency" (defined in ARRA as an LEA) which, in turn, could provide professional development services to an LEA using a firm's products and support (purchased using "freed up" funds). Ed Jobs funds could be used by an education service agency to hire professional development staff or to retain existing trainers who would actually conduct the training.

One other possible growing sales opportunity for firms with certain types of products and services is the $16.1 billion extension of Federal Medicaid relief funding to states through June of next year. Most of the immediate attention is focused on the number of Medicaid-related jobs that would be retained by more than 30 states whose state budgets had assumed additional Medicaid funds would be provided for this year (e.g., 10,000 jobs would have been lost in Pennsylvania alone according to Governor Ed Rendell on a recent *Face the Nation* broadcast). Opportunities could be created for firms who: (a) have products/services that could be used to help school districts collect information on costs paid by districts for related services to eligible low-income students enrolled in special education and otherwise to assist in filing claims for such reimbursements; or (b) have appropriate products and services for related services. About five years ago, the amount of Medicaid funds reimbursed to districts for related services funds under state School CHIP (S-CHIP) program was between $1.5 and $2.0 billion; in recent years, S-CHIP funding was reduced by regulatory changes in eligible services by the Bush

Administration. In TURNKEY's 2005-06 survey of expenditures on Technology Use in Special Education Programs, we found approximately five percent of all instructional software purchases for use in special education programs was paid for out of Medicaid reimbursements. The amount of freed-up money from S-CHIP Medicaid reimbursements will likely increase as a result of the $16.1 billion relief extension. In addition, as reported in Education Week (August 11th), under the recent health care act, an additional $250 million over four years will be available shortly for capital improvements to school clinics. Additional funds to cover operating costs have been authorized but not yet appropriated by Congress for over 2,000 school health centers serving almost two million students in 44 states.

A number of observers have recently pointed to some of the problems and challenges at the district level caused by the late passage of the Ed Jobs Bill. As Jennifer Cohen at *EdMoney Watch* (August 12th) noted, many districts are "effectively stuck" with the outcomes of previous decisions made under the assumption that no additional Federal teacher support funding would be made available, and that "some school districts who really could use the extra funds but were functioning under the assumption they would never come, have already finalized classroom assignments, course schedules and other staffing details. For them, it would be too big of a hassle to start over again on those decisions given the new funding. This is even more significant for districts that may not see extra federal funds until after the school starts. Adding new teachers, classrooms, and course offerings one month or later into the school year could cause more disruption than they are willing to handle." As Cohen notes, some of these districts could "shift around funds to bring back programs and services that were previously eliminated during cost-cutting efforts."

Based on the "Initial Guidance for States," for firms with certain products and services, there may exist some limited opportunities as noted above for professional development and related services, working with education service agencies, and perhaps in new or expanded early childhood, after-school, or extended learning programs as Ed Jobs funds are allowed to be used to hire new staff as well as retain or rehire previous programs staff. However, in most cases, the greatest opportunities will relate directly to "freed-up" local and other funds -- that would have otherwise been used to retain as many teaching and related jobs as possible -- that potentially could be used to purchase products and services directly. This situation is similar to the Section 613 local option under IDEA which allowed eligible districts to allocate up to 50 percent of their IDEA funding increase, to free-up the same amount of local funds being used to pay for special education mandates. Based on recent surveys from the Center on Education Policy and other organizations (see July TechMIS), between 40 and 45 percent of districts last year took advantage of the Section 613 local option, freeing-up several billion dollars, some of which was used to purchase instructional software, materials, and technology.

The total amount of freed-up local funds created by Ed Jobs could be several billion dollars over the next two years. Several bottom line questions remain: (a) how many governors will submit approvable applications by the September 9th deadline, a determinant of what states will receive funding; (b) which funding allocation formula will each approved state use -- the state's regular state aid formula for elementary and secondary education (which will ensure more districts will receive small or moderate amounts of funding) or the most recent Title I funding allocations (in which the large urban, high-poverty districts will receive a larger proportion of such funding); and (c) how many districts will spend Ed Jobs funds this year or carry over most funds to next year?

Two footnotes are worth raising. Under the ARRA SFSF guidance, if a state had any remaining funds after distributing SFSF funds to districts under the state's regular state aid formula, then such remaining funds would be allocated to districts in proportion to the districts' Title I allocations for that year. In the Initial Guidance for Ed Jobs, it appears that a district receiving Ed Jobs funding could carryover any unspent money to the next year for any allowable Ed Jobs use. As already reported in the media, some states are already considering holding back on allocating funds to districts because of the lateness of funding availability. These and other issues will have to be addressed in subsequent Ed Jobs guidance.

Because of allegations by Texas Congressman Lloyd Doggett (D-TX) that over $3 billion of initial SFSF funds for Texas was used to supplant regular state education aid last year, stricter maintenance of effort requirements were placed on Texas in the Ed Jobs Act. As a result, a separate set of guidance and applications are applicable only to Texas. In addition to the stricter maintenance of effort requirement, Texas is also required to distribute Ed Jobs funding, totaling approximately $830 million, based on Title I district allocations not the regular state aid formula for elementary and secondary education. Discussions we have had with several knowledgeable Texas observers indicate that Governor Rick Perry will not be requesting Ed Jobs funding before the gubernatorial election. If Governor Perry is reelected and/or if the new Governor or another eligible Texas entity does not submit an application, the entire amount allocated for Texas could be reallocated to other states. On the other hand, if Texas does apply for and receive Ed Jobs funding, the major beneficiaries will be large urban districts receiving proportionately larger amounts of Title I funds than other districts in the state.

Attachment: Final District Title I Allocations

In our March TechMIS issue we provided an analysis of the local school districts across the country who had the largest increases in their Title I funding, based on the U.S. Department of Education's preliminary allocation list. With the final allocations now out, we spot-checked more than 20 large districts to see if there are any significant differences between the preliminary and final allocations. While slight differences were found, the largest was less than one-half of one percent. This strongly suggests that the districts receiving large increases highlighted in our March issue are still the LEAs on which TechMIS subscribers should focus their Title I marketing strategies. With the passage of Ed Jobs, in those states which decide to allocate their portion of the $10 billion to districts based on districts' proportional allocations of Title I funds for this year, the districts which have received the largest Title I increases (see March 2010 TechMIS issue) are going to receive proportionally more of the Ed Jobs funding to retain or hire staff which in turn could free up local and other money which could be used to purchase products and services as noted in this Special Report. If the language in the State Fiscal Stabilization Fund guidance prevails, any leftover state Ed Jobs funds could be allocated to districts based on district Title I allocations this year. However, as noted in this Special Report, the initial guidance is unclear as to whether or not that portion of the SFSF formula statutory language will prevail.

We also checked a few critical states with respect to the maximum per-child Title I expenditure for Supplemental Educational Services (SES). The amounts across states and districts were remarkably consistent, generally ranging from $900 to $1,500 per student. A quick search for districts with unusually high per-pupil SES expenditures (i.e., greater than $3,000) found only a handful, all of which were small districts with very few SES-eligible students. We also reviewed the maximum per-child Title I expenditure for SES from our August 2008 report to determine, for a limited number of districts, whether there were any significant differences between the amounts then and now. The maximum SES fee per eligible child was approximately the same over the two-year period in such states such as Georgia, New York, New Jersey, and Florida. In most Louisiana districts, however, the potential amount per student participating in SES would be approximately $400 to $500 more. This offers increased opportunities for firms to partner with districts that operate their own SES programs; most districts in "improvement" have applied for and received waiver approval to provide their own SES. Some of the districts with the maximum per-pupil ceiling for SES fees higher than $3,000 might provide opportunities for partnering, although most of these districts are small with a limited number of students eligible to participate in SES.

TechMIS subscribers who wish to see Title I allocations and SES caps for individual LEAs should go to: http://www2.ed.gov/about/overview/budget/titlei/fy10/index.html