



FEDERAL LEGISLATIVE UPDATE

August 21, 2018

Perkins Career and Technical Education Act: Earlier this month, President Trump signed the reauthorized Carl D. Perkins Career & Technical Education Act reauthorization into law. The bill does include small improvements as it relates to the paper work burden and establishing programmatic parallels between Perkins and ESSA. The final bill, based on the Senate version, did not make as many improvements as the House version of the bill. We are so close to the bill being signed into law that we are still waiting for the dust to settle, in terms of getting clarifications about what some items in the bill mean (a testament to the very high pressure, rushed nature of this bill) as well as how USED will interpret and implement the bill. We will have additional detail available on this during September's Educator's Call To Action Conference in Washington DC.

Annual Appropriations: Congress continues its work on finalizing appropriations bills for FY19, which starts on October 1. Education funding is in the Labor Health Human Services Education Other (LHHS) bill, which is in the non-defense discretionary (NDD) portion of the budget. Between FY18 and FY19, NDD funding increases \$18 billion. LHHS represents approx. 1/3 of discretionary funding in the overall budget, and we have been advocating for a proportional increase to the LHHS slice of the pie, which would be close to \$5.5 billion. The House proposal level funds LHHS and the Senate bill provides a \$2 billion increase. Neither bill meets proportional increase. In terms of moving forward: The Senate is very hopeful they will get LHHS to the Senate floor the week of August 13, the first time they will have a floor vote since 2007. Their strategy is to bundle the LHHS bill with the defense spending bill, a critical step because defense is major leverage for getting more conservative members to pass LHHS. The House has no plans to bring their LHHS bill to the floor, the expectation is that everything will be hammered out in Conference Committee once the Senate passes its bill. Negotiations over conference allocations (program funding levels) are ongoing—subcommittee chairs and ranking members have been getting their final allocations after their bills pass on the floor. Unfortunately, we are probably looking at a compromise figure between the House and Senate 302(b) allocations for that bill.

Educational Broadband Services: The Educational Broadband Service (EBS) was created by the FCC to provide educational resources to schools and libraries, currently by providing access to a special band of internet spectrum directly to beneficiaries. Most districts and libraries that receive EBS currently license the use of this spectrum to internet providers, creating both internet access and revenue. The initial filing on this proposal was more than ten years ago, and during that time, the FCC has not opened the program to provide new licenses. They are currently suggesting a change to EBS that would open the spectrum over broader geographical areas to licensees beyond just schools and libraries. Earlier in August, AASA and AESA provided [comments](#) urging the FCC to keep the "education" in Educational Broadband and open the spectrum to more schools and maintain its intended purpose to benefit educational entities. We will continue to fight to open the spectrum to more school districts while maintaining the structure of the EBS program to focus on education.

IRS Regulations: Earlier this summer, the IRS indicated it will be releasing regulations and guidance clarifying the treatment of income recharacterized for purposes of working around the new \$10,000 cap on the state and local tax (SALT) deduction. Thus far, New York, New Jersey, and Connecticut have passed legislation designed to enable high-income taxpayers to circumvent the cap, with legislation [pending](#) elsewhere. In the notice, the IRS emphasized the "substance over form" doctrine, meaning that the [IRS cares](#) about the actual substance of a payment, and not the name or form it may be given. The related issue we are following here is that if the regulation aims to close/clarify this perceived loophole, we want to make sure it closes a related loophole, the one that allows some individuals to profit from tuition tax credits. This is particularly relevant when we consider that Betsy DeVos's former group, American Federation for Children, wrote a letter asking for preservation of this very provision.

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- AESA, along with 21 organizations belonging to the National Coalition for Public Education [wrote a letter](#) asking the Trump administration to close a tax shelter that allows donors to state tax credit voucher programs to reap both state and federal tax benefits. Eighteen states have tax credit scholarship programs, which award individuals or businesses a full or partial tax credit when they donate to organizations that grant private school scholarships. The letter specifically addresses a soon-to-be-released regulation on the State and Local Tax Cap that was put in place under the GOP tax proposal last year that caps state and local tax deductions at \$10,000. While the letter does not take a position on how the IRS treats states that have proposed a similar workaround that would allow taxpayers to get a federal deduction and a state credit for their donations to support public schools, the IRS is expected to block these efforts in high-tax states. If the IRS denies states like New Jersey, New York, Oregon and others to use an identical state tax credit/federal deduction work-around the letter argues that it would create a tax preference for donations to private schools over public schools. When the proposed SALT regulation is released we will be asking school leaders to submit comments to the IRS, so stay tuned!
- Related to all of this, you can read AASA's "How Voucher Tax Shelters Undermine Public Education" https://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Resources/AASA_ITEP_Voucher_Tax_Shelter.pdf

USED Guidance on McKinney Vento: The U.S. Department of Education [issued guidance](#) directed at McKinney-Vento and Title I State coordinators clarifying how ESSA has changed the use of the Title I homeless reservation. Specifically, the guidance clarifies that an LEA is still required to reserve Title I funds for homeless children and youth even if all schools in the LEA are Title I schools. Prior to ESSA, the LEA only had to reserve funds to provide support services for homeless children and youth if they did not attend Title I schools. ESSA changed this provision and the guidance makes clear that the LEA must reserve Title I funds to provide educationally related support services to homeless children and youth regardless of whether they attend a Title I school. In other words, the need to reserve funding for McKinney-Vento services and programs applies even when all schools in an LEA are Title I school (including Title I schoolwide schools) or when an LEA has a mix of Title I schools and non-Title I schools. If the LEA has a mixture of Title I and non-Title I schools, then the LEA can use McKinney-Vento funding to provide regular Title I services to homeless students attending non-Title I schools as well as to provide homeless students with services not ordinarily provided to Title I students regardless of the type of school they attend.

To be clear, an LEA is not required to reserve a specific amount of funding for services under McKinney Vento. There is no designated set-aside amount. However, the funding level must be sufficient to provide appropriate services to homeless children. The guidance also says that if an LEA has a small number of homeless children it could use a district-wide per-pupil amount for homeless students if it meets the requirement for serving homeless children in ESEA. ESSA and the guidance also recommends that an LEA conduct a needs assessment to determine how much they should be spending on homeless students and youth. Like in the past, McKinney-Vento funding can be used to pay for a local liaison's salary and expenses, transportation to/from the school of origin and other services not usually provided to Title I students.

Federal Advocacy Assistance from AESA

If you need assistance with either composing your comments to submit to your legislators, or if you need any other federal advocacy assistance, please contact me, or Noelle Ellerson Ng, AESA Federal Legislative Liaison, at nellerson@aasa.org.