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Issues and Opportunities: Surveying the 2017 Federal Education Policy Landscape

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As the dust settles on this tumultuous election cycle, federal education policy leaders are entering somewhat unknown territory in light of President-elect Trump's minimalist policy record and unconventional campaign. Nonetheless, the nascent Trump Administration and key decision makers on Capitol Hill are beginning to make plans and decisions that will undoubtedly have long-term implications for public education. With just over two months until the President-elect takes office, his transition team must act swiftly to complete consequential planning across a range of policy areas, including education. Although it is impossible to speak with certainty ten days after the election, we do not expect education to be a prominent part of the Trump Administration's early agenda. Given Mr. Trump's campaign commitments on high profile issues, including health care, global trade, Iran, and the open Supreme Court seat, education is likely to be a second tier or second year focus. His transition team, however, includes education policy advisors - led by AEI Fellow and former Florida Education Commissioner Gerard Robinson - who will be responsible for shaping the new administration's initial education policies and strategy.

We expect Republican education leaders on Capitol Hill and other conservative policy experts to work with the transition team to develop a more in depth education policy platform. It is important to note, however, that candidate Trump may not adopt an orthodox Republican education policy platform. Unlike virtually every Republican candidate for federal office in recent memory, Mr. Trump proposed billions of dollars of new education investments. Will he insist on that path now that he has been elected or will he be persuaded by the Republican establishment to take a more fiscally austere and federalism focused approach? The answer to this question could dramatically impact the federal political and policy landscape, including creating opportunities for unlikely education policy partnerships with Democrats eager to secure greater education investments.

The transition team's initial planning will likely include developing a focused set of policy priorities, perhaps building on the issues raised by Mr. Trump during the campaign - such as expanding charters and choice, using tax credits to support

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childcare, establishing new higher education repayment structures - and other issues. Typically the education staff on a transition team would also propose near- and longer-term education policy goals for the President; identify potential U.S. Department of Education political appointees, including prospects for the next Secretary of Education; and suggest spending priorities and desired funding levels for a complex array of education programs. The team will almost certainly also explore a range of other policy ideas.

Congress' work in 2017 could also be incredibly consequential for public education. Democrats gained two seats in the Senate, but Republicans still hold a narrow majority (48 Ds, 51 Rs; Louisiana undecided). Democrats also gained seats in the House, but the Republicans still have solid control (193 Ds, 239 Rs, 3 undecided). As a result, conservatives will control Congress's priorities and legislative calendar for at least the next two years. Education leaders should closely monitor Republican and Democratic planning for the 115th Congress, especially including the work already underway by senior members of the Senate Health, Education, Labor and Pensions Committee and House Education and the Workforce Committee. Republicans and Democrats on Capitol Hill must - even as they slog through the upcoming lame duck session - approve leaders for the education authorizing committees and appropriations subcommittees; establish committee legislative schedules and priorities; and craft new and updated legislation for introduction in the new Congress.

Given the importance of public engagement with the transition team and the new Congress, this brief paper speculates about the education policy issues that could be featured on the 2017 agenda and provides context to help readers understand the range of factors - including the election's outcome - that may influence executive and legislative branch planning decisions over the next few months.

Trump Administration Outlook

Leadership

The President is responsible for making thousands of political appointments across the government. An incoming administration typically announces the 50 most senior positions, including the Secretary of Education, prior to Thanksgiving. Early speculation about the next Secretary is focused on William Evers of the Hoover Institution (Stanford University) and the Trump transition team, but the short-list could be longer and may include other individuals with experience and expertise outside education. If President-elect Trump elects to follow through on campaign commitments to make new investments in

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education, he might be served best at U.S. Ed by a business leader, or other policy outsider that is not wedded to established Republican education policy norms at the federal level. His current candidate short list, however, suggests that a more traditional conservative candidate may be tapped to lead the Department.

Although the President's selection for Secretary of Education will be consequential, education policy observers should also pay close attention to the Department of Education's broader leadership and power structure. If President-elect Trump appoints someone from outside the education field as Secretary of Education - such as a business leader - the role of Assistance Secretary for the Office of Elementary and Secondary Education (OESE) and the influence of career staff might be significantly elevated in importance. For example, under this scenario, ESSA implementation could fall primarily on the shoulders of the new OESE leader. The key ESSA implementation decisions described above - including the forcefulness of the Department's ESSA implementation strategy - will be heavily influenced by this appointment and the distribution of power around the Department. Therefore, K-12 stakeholders should not lose sight of this role's importance, even as they suggest leaders to fill the Secretary's role and the always-important role of Assistant Secretary for Planning, Evaluation and Policy Development.

Policy

Mr. Trump's campaign largely eschewed policy detail, but did propose several education ideas and programs during the general election campaign, including establishing a new \$20 billion federal investment in school choice; capping periodic student loan repayments at 12.5 percent of income, along with granting loan forgiveness after 15 years; and creating a new childcare tax credit for low income families. These issues could form the basis for the Trump Administration's education agenda, but do not necessarily align well with the current federal policy and budget context. For example, although promoting school choice fits squarely within accepted Republican education policy, the Every Student Succeeds Act already includes a strong bipartisan commitment to charter schools, though it does not encompass the scale of investment contemplated by Mr. Trump. Furthermore, a formal effort by the new Administration to secure a new \$20 billion investment in charters (\$5 billion more than the largest existing federal K12 program - Title I) would most likely not be welcomed by the Republican Caucus and certainly would not fit within the Budget Control Act's rigid caps.

Likewise, his proposed student loan interest cap and child tax credits would also require large new investments, but perhaps as described above - in a "Nixon goes

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to China” moment - the new Republican President-elect could succeed in forcing his party to eliminate, or further soften, the sequester and begin investing heavily in his priorities. This outcome is not entirely unreasonable to suggest, given growing bipartisan concerns about the budget cap’s impact on defense, transportation, and other infrastructure. Odds are, however, that budget hawks on Capitol Hill will prevail, forcing the new Administration to work with more modest funding levels and a less aggressive policy set.

Beyond the three campaign policies mentioned above - and frothy campaign rhetoric related to the Common Core and eliminating the U.S. Department of Education - the President-elect’s education platform is a blank slate. If he continues his populist streak, the new President-elect could break with the Republican Party in important ways, but the transition may also simply take strong signals from Republicans on Capitol Hill and establishment conservative education policy leaders. Congressional Republican’s top education concern is ESSA implementation - including discrete parts of the pending accountability regulations and the dreaded supplement not supplant rulemaking - which likely offers the best, first opportunity for conservative education leaders to partner with the incoming Secretary of Education and the White House.

Every Student Succeeds Act Implementation

The new Department of Education’s initial K12 agenda will most likely focus on shaping implementation of the Every Student Succeeds Act, which they will inherit regardless of their other plans and priorities. Although the current administration will complete most of the significant ESSA rulemaking this year - including the accountability, assessment and supplement not supplant rules - President-elect Trump’s U.S. Department of Education team must assume responsibility for finalizing the law’s initial implementation. Most importantly, the new administration must quickly prepare to guide the peer review and approval of states’ ESSA consolidated plans, which states must, unless modified in the final accountability and state planning rulemaking, submit to the Department of Education in March or July of 2017. Observers should not expect the new administration to make the peer review process a rigorous experience for states. State plans are likely to be approved without changes, except in clear instances where the plans conflict with the statute.

Given that states must fully implement ESSA by the 2017-18 school year, it will be difficult - but not impossible - for the Trump team to fundamentally change the regulatory structure put in place by the Obama Administration. Moreover, there has been no indication from the new administration’s transition leaders that completely overturning the regulations is likely to be a priority. A completely new team is not likely to be in place at the Department of Education until late-winter or early spring and additional rulemaking would require

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significant time. Thus, the new administration may have to settle for key discrete changes in the near term - e.g. eliminating the single summative rating, scrapping the consequences associated with missing the 95% assessment requirement - to keep the implementation process on track and working over the long term to address other modifications. Note, however, that even discrete changes would require public notice and comment and may not be possible until later in the administration. Furthermore, it might behoove the current administration to address these issues in the final rules due to be published in the next few weeks. Proactively modifying the rules before the Trump team takes over at U.S. Ed could further discourage reopening the rulemaking, which might lead them to make broader changes beyond the issues that have most frustrated conservatives.

The new Administration will also assume responsibility for implementing - for the first time - key ESSA programs, such as the Student Support and Academic Enrichment block grant, the updated teacher and leader pay for performance program, the Preschool Development Grant program (HHS), and the law's innovative assessment pilot program, just to name a few. While less impactful as policy levers than key ESSA regulations, the new Administration will - if they choose to - have the ability to publish guidance and provide technical assistance that could influence how these important resources are deployed in the field.

Higher Education Act Reauthorization

The transition team may also focus time and attention on higher education, given Congress's expected 2017 efforts to restart the Higher Education Act (HEA) reauthorization process. Education advocates complained mightily about the absence of education policy in the presidential campaign, but education was hiding in plain sight. Burdensome student debt levels - and the related issues of college access and completion - prominently featured in the Democratic primaries and became a central part of the Clinton Campaign's effort to attract millennial voters, which in turn led the Trump Campaign to announce the interest cap and debt forgiveness plan mentioned above.

It is not yet clear, however, if President-elect Trump would pursue his interest rate cap idea or otherwise seek to mitigate higher education costs. Interestingly, student debt potentially aligns well with his populist campaign and he already has a proposal on the table. As mentioned above, tackling this specific challenge, however, could be extremely expensive. For example, if the new Administration proposes to use discretionary spending to pay for the initiative, the plan's budget scoring would quickly crash into the rigid spending caps established by the Budget Control Act of 2011 (as modified). This approach would also test the President-elect's ability to secure support from budget hawks in his own party. The spending caps are extremely onerous, despite recent upward adjustments,

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and will remain in place for years to come, unless Congress and the White House eliminate them. On the other hand, the new administration could at least, despite the high cost and low likelihood of prevailing on Capitol Hill, propose an aggressive strategy for addressing student debt. This approach would, at a minimum, help to demonstrate the President-elect's acknowledgement that millions of young adults are struggling with student debt. He may not be interested in doing more than paying lip service to the issue, but only time will tell.

President-elect Trump could also work closely with education leaders on Capitol Hill, such as Senate HELP Committee Chairman Lamar Alexander (R-TN) and likely House Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) to pursue higher education policy changes that have a better likelihood of securing the Republican Congress's support, such as scaling back the U.S. Department of Education's role in higher education lending, reducing higher education institutions' regulatory burdens (building on the work of the 2015 ACE Higher Education Regulatory Task Force established by Sen. Alexander and key HELP Committee Democrats), and updating the accreditation system. This work could also include addressing the Department of Education's recently published teacher preparation rules, which have been challenged by some Republican leaders on Capitol Hill.

Early Learning

President-elect Trump's administration could include a focus on childcare and early learning. This direction is possible for several reasons. First, the President-elect already proposed a childcare program and said it would be an early priority. Second, strengthening early learning systems has emerged as a significant focus of bipartisan state-level work. State leadership on early learning issues was magnified by major federal investments during the Obama Administration - such as the Race to the Top Early Learning Challenge and the Preschool Development Grants program - but it has widespread and growing support among state leaders working to promote kindergarten readiness and close persistent achievement gaps. Third, federal early learning policies and investments have benefited from both Democratic and Republican support on Capitol Hill. This area could provide an opportunity for the new administration to work with Democrats. Investments in the Preschool Development Grants program and ESSA's expansive early learning provisions were possible because of bipartisan cooperation. As mentioned above, however, significant new investments will not be well received by budget hawks on the Hill.

This strand of the new Administration's work, however, could take initial form through implementation of the new Preschool Development Grant program, which was authorized by ESSA thanks to the work of Senator Isakson (R-GA) and Senator Murray (D-WA), but established under the Department of Health and

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Human Services' jurisdiction. The new administration's early childhood education work could also be led through implementation of the new Head Start Performance Standards and the recently reauthorized Childcare and Development Block Grant program (observers speculate the former Louisiana Governor Bobby Jindal may be appointed HHS Secretary). Over the longer term, the Trump Administration may also have an opportunity to work with Congress to update Head Start and the infants and toddlers programs of the Individuals with Disabilities Education Act.

Education Technology

Candidate Trump called for major new private sector infrastructure investments. His campaign did not expressly address education technology infrastructure and policy, but education leaders that are focused on expanding high capacity broadband infrastructure, strengthening data systems, and securing better technology for instruction, analysis and assessment should highlight these ideas for the transition team. Similar to the campaign's other proposed investments, which were mentioned earlier in the paper, President-elect Trump might ultimately adopt the Republican party's aversion to new spending, but it is worth noting that there is widespread, bipartisan concern about the nation's infrastructure, which could create opportunities for promoting digital equity.

On a related note, some observers have expressed early concern that the new administration will appoint leadership at the Federal Communication Commission that will be hostile to the E-rate, Lifeline, and other connectivity programs. We are not overly concerned about the programs' future, but observers should closely monitor the new administration's work in this area. E-rate and Lifeline are statutory programs that enjoy strong bipartisan support on Capitol Hill. Efforts to dismantle the programs would also appear to contradict candidate Trump's infrastructure commitments. Possible policy modifications might arise over time, but the programs' longer term funding levels and trajectory should remain steady.

Congressional Outlook

Overview

Although observers widely expected Republicans to maintain control of the House, they also sustained control of the Senate for the 115th Congress. Senate Republicans still do not, however, have the 60-vote threshold required to drive legislation, or presidential nominees, through the legislative body without at least some Democratic support. Nonetheless, Republican control of the Senate agenda will be incredibly important to the incoming administration, particularly

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regarding the President-elect's eventual appointment of a new Supreme Court justice, but also with regard to the thousands of other appointments the White House will make in the next two years. Divisions within the Republican caucus, however, could pose significant challenges to the majority's efforts to govern. Only additional time will tell how the Republican caucus will organize itself and whether or not they will be able to develop a shared Senate-House agenda. This internal power struggle will almost certainly be exacerbated by a President that does not fit a traditional Republican mold and who has not been governed by the normal laws of political physics.

Education policy's top posts on the Senate Health, Education, Labor and Pensions Committee (HELP) and House Education and the Workforce Committee (Ed & Workforce) will likely be filled by a combination of existing and new leaders during the 115th Congress. Even modest leadership changes could appreciably affect the committees' specific priorities and focus, but certain issues fall naturally onto the 2017 calendar. Despite recent progress in passing updates to laws that were many years past their authorization dates - including the Elementary and Secondary Education Act and the Childcare and Development Block Grant - several critically important federal education laws still require Congress's attention. Congress is behind schedule in updating the Perkins Career and Technical Education Act (CTE), the Higher Education Act, the Education Sciences Reform Act (ESRA), the Head Start Act, and the Individuals with Disabilities Education Act. Among these laws, CTE, HEA, and ESRA are most likely to garner Congress's attention in 2017. How the measures are addressed, however, will depend in part on the leadership of Congress's education committees and the priorities of President-elect Trump and his Secretary of Education.

Expected Senate HELP Committee Leadership and Priorities

Senate HELP Committee Chairman Lamar Alexander (R-TN) and Senator Patty Murray (D-WA) will continue their leadership of the HELP committee. Senator Alexander and Senator Murray worked effectively together to complete the Every Student Succeeds Act reauthorization. While not always in agreement, their partnership may be particularly important in 2017 given the very significant leadership changes on the horizon.

- As chair, **Senator Alexander** will likely remain focused on overseeing the U.S. Department of Education's implementation of the **Every Student Succeeds Act**, but that effort should require less time and effort under the Trump Administration. Senator Alexander has repeatedly expressed concern about the direction of the current Department's proposed Title I "supplement, not supplant" and accountability regulations. As 2016

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- unfolds, he will - as needed - work to address those issues, while also ensuring the Department's new leadership does not unduly influence state's proposed ESSA consolidated plans during the peer review process. Senator Alexander has also expressed an interest in working on the **Perkins Career and Technical Education Act** reauthorization in 2016, including championing language that would restrict aspects of the Secretary of Education's regulatory authority over CTE programs (with an eye on curbing future progressive administrations). Finally, Senator Alexander will likely continue his 2015 efforts to diminish the U.S. Department of Education's role in higher education lending and work to reduce higher education institution's overall regulatory burdens, including building on the ACE Higher Education Regulation Task Force he helped launch in 2014. He may also use HEA reauthorization as lever for overturning or modifying the Department of Education's new teacher preparation regulations, which some conservatives have complained inappropriately prescribes educator evaluation requirements.
- As Ranking Member, **Senator Murray** will no doubt use her position to protect ESSA's accountability requirements, while also working to find ways to work with Chairman Alexander on HEA and CTE reauthorization. This work will likely include a continued focus on student debt, college access, teacher preparation and other strategies. We also expect Senator Murray to continue to be a leading voice for high quality early learning policies and investment, especially if the Trump Administration follows through on campaign promises to expand childcare and child enrichment opportunities.

Expected House Ed & Workforce Committee Leadership and Priorities

House Ed & Workforce Committee Chairman Kline will retire at the end of 2016. Representative Virginia Foxx (R-NC), a longtime member of the committee and a former community college leader, appears poised to replace him. Representative Bobby Scott (D-VA) will most likely continue as the committee's senior Democrat. We expect the House committee to initially focus on reauthorization of the Higher Education Act and updating the Perkins Career and Technical Education Act, but the Education Sciences Reform Act, student data privacy (updating FERPA), and other issues may also arise.

- **Representative Foxx** will likely prioritize reauthorization of the Higher Education Act, while also negotiating with the Senate to finalize the Perkins Career and Technical Education Act reauthorization. Representative Foxx played an important role in the last HEA reauthorization process. She would likely emphasize reducing higher

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education regulations and could join Senator Alexander in using the reauthorization process to overturn, or otherwise address, elements the Department of Education's new teacher preparation regulations. As the author of the HEA's prohibition on a federal student unit record system, she might oppose emerging efforts to remove the HEA's SUR ban. Linked to new privacy commitments (perhaps using the HEA reauthorization debate to further languishing committee efforts to update FERPA), however, she might be persuaded to negotiate a new position. With regard to K12 education, Representative Foxx worked closely with Chairman Kline to support ESSA's passage and has expressed concern about aspects of the rulemaking process. A champion for greater state and local control over K12 education, she recently joined 24 other Members of Congress in sending a letter to the Secretary of Education expressing opposition to the Department of Education's proposed supplement, not supplant rulemaking. We expect her to urge new Department leaders to address these concerns and to tread lightly during the peer review process.

- We expect **Representative Scott** to remain the Ed & Workforce Committee's ranking member. He is likely to use his position to continue advocating for a strong federal role in promoting educational equity and K-12 accountability, including opposing possible administration efforts to reverse Office for Civil Rights guidance that has emerged as a flash point with conservatives. He would also likely use his position to resist any administration efforts - if they arise - to scale back the current Administration's ESSA regulations. He might also play a lead role in defending the Department of Education's role in higher education lending, should the HEA reauthorization process take center stage in 2017. Mr. Scott has also been a strong champion for high quality early learning and could be an unlikely partner with the administration, if the President-elect decides to follow through on his childcare proposals and is willing to work with the minority to shape them.

Conclusion

Only a week and half have passed since the election, so these high level insights about the important education work that may emerge during 2017 remains very speculative. While some areas of federal emphasis seem clear - for example the education committees' likely focus on HEA reauthorization - the Trump Administration's positions are harder to predict. If President-elect Trump follows the investment focused education agenda described by his campaign, he will be blazing a new trail for the Republicans at the federal level. Alternatively, he could simply decide to adopt a more traditional Republican approach focused on reducing the federal footprint in education. He might also take both paths. We

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should know more about his administration's likely direction within weeks, but in the meantime education stakeholders should engage the transition team and suspend disbelief (at least temporarily) about what they might be able to persuade the new administration to do in order to help the nation's schools.

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