Every Student Succeeds Act (ESSA) Summary

On Dec. 10, 2015, President Obama signed the "Every Student Succeeds Act" (ESSA), which reauthorizes the Elementary and Secondary Education Act (ESEA) and replaces the No Child Left Behind Act (NCLB). Passed with bipartisan support, ESSA represents a shift from broad federal oversight of primary and secondary education to greater flexibility and decision making at the state and local levels.

This document provides a brief summary of some key provisions in the 1061-page ESSA bill based on our analysis. The precise meaning and impact of ESSA will continue to play out through regulations, guidance, and implementation over the coming months and years – presenting opportunities at the state and local levels for improving education systems and outcomes for all students in the nation.

Summary and Analysis of Key ESSA Issues

The following bullets summarize how several major education issues are addressed in ESSA:

Transition – With regard to the bill's general requirements, they will take effect on the date of enactment. However, for this 2015-2016 school year the current construct under ESEA continues, including the current accountability system. ESEA waivers granted under NCLB will continue through August 1, 2016, and school accountability determinations and consequences from 2015-2016 school year will carry forward through 2016-2017 school year and potentially beyond. Beginning with the 2017-2018 school year, states will need to implement the new accountability system called for under ESSA and identify schools for comprehensive support and improvement. For any school or school district that is identified as in need of improvement, corrective action, or restructuring under NCLB or as a priority or focus school under ESEA waivers, they must continue to implement applicable interventions until a new Title I state plan is approved or accountability provisions take effect in the 2017-2018 school year, whichever comes first.

With regard to funding, ESSA changes will take effect for formula programs beginning on July 1, 2016, and for competitive programs on October 1, 2016. Recipients of multi-year awards will continue to receive funding through September 30, 2016 (or the end of fiscal year 2016). During this time, funds will be able to be used for planning and transition activities to ensure orderly implementation of the bill. After this time, unless a program is reauthorized or is substantially similar to a newly authorized program no additional funds will be awarded. ESSA authorizes programs through fiscal year 2020.

Academic Standards – ESSA maintains that states are required to set challenging state academic standards in reading or language arts, math and science, and may set such standards for any other subject determined by the state. In addition, for the first time, states must demonstrate that their challenging state academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the state, and relevant state career and technical education standards. The law limits the federal role with regard to standards. As under NCLB, states are not required to submit their standards to the Secretary of Education. The Secretary also cannot mandate, direct, control, coerce, or exercise any direction or supervision over the standards adopted or implemented by the state, including conditioning or incentivizing the receipt of a grant or a waiver on adoption or implementation of specific standards, including Common Core State Standards.

Assessments – ESSA maintains a requirement that every state have annual assessments in reading or language arts and math for grades 3-8 and once in high school, as well as science assessments given at least once in each grade span from grades 3-5, 6-9, and 10-12. The law also allows states to use an alternative assessment to assess up to 1% of students with the most significant cognitive disabilities in each grade level and subject; however, no local cap on participation in these alternative assessments is included. ESSA continues the state assessment grants program providing formula funds to states unless funding exceeds a "trigger amount" equal to at least $369.1 million per year. It eliminates enhanced assessment grants in NCLB, but allows for competitive grants to improve state assessment systems for English learners, students with disabilities, etc. if federal funding for state assessment grants exceeds the trigger amount. Further, the law adds a number of other provisions and programs related to assessment:

- **Opt-Out and Participation** – ESSA maintains the federal requirement that 95% of students in a school must participate in federally-required state assessments, but allows states to describe how that will factor into their accountability systems. Specifically, the law preserves the ability of states or locals to create their own laws governing parental decisions to opt their child out of participating in academic assessments. In addition, ESSA requires that at the beginning of each school year, school districts notify parents that they may request information on any state or school district policy regarding student participation in any mandated assessments, which shall include any opt out policy, where applicable. NCLB and ESEA waivers labeled schools as low-performing if they did not meet the 95% participation rate.
- **Locally-Selected Assessments for High Schools** – ESSA allows locally-selected assessments to be used in a limited way in lieu of the statewide assessment if a school district selects a nationally-recognized high school academic assessment that has been reviewed and approved by the state. The intent is to allow school districts to select and use, subject to state approval, existing assessments such as the ACT and SAT exams. Once the assessment is approved by a state, states are required to approve the use of such assessment in any school district that subsequently requests to use such assessment. The assessment must also be aligned to the state's standards and be comparable to state-designed assessments such that they are equivalent in content coverage, difficulty, and quality.
- **Pilots for Innovative Assessments** – The law allows pilots for states to develop and administer innovative assessment models. Specifically, USED will have the authority to approve applications for up to seven states for the first three years of the pilot (with additional states allowed later). The states could propose assessment systems that include components such as competency-based assessments, instructionally-embedded assessments, interim assessments, cumulative year-end assessments, or performance-based assessments that combine into an annual summative proficiency determination for a student. The assessments must validate when students are ready to demonstrate mastery

or proficiency and allow for differentiated student support based on individual learning needs. The innovative assessments would also need to be comparable to state-designed assessments, and are meant to be scaled statewide over a number of years. (Recently under ESEA waivers, New Hampshire received approval to pilot a system of performance-based assessments in a limited number of districts in lieu of statewide assessments in certain grades with a plan for the new assessment system to eventually be taken statewide.)

- **Assessment Audit Grants** – The law creates new grants for states to audit the number and quality of assessments statewide and ensure school districts audit local assessments. The law also allows each state to set a target limit on the aggregate amount of time spent on testing for each grade as a percentage of annual instruction hours.

Accountability – ESSA replaces Adequate Yearly Progress (AYP) and ESEA waiver accountability systems with a requirement that states create accountability systems that include long-term goals, regular determinations of interim progress toward these goals, and annual determinations of student performance and school quality – for the school overall and for each subgroup. Indicators are used by the state and districts to differentiate among schools annually and, at least once every three years, to identify schools in need of comprehensive support and improvement. States and districts have greater flexibility in determining accountability indicators and weights, accountability systems, and school interventions than under NCLB or ESEA waivers. In addition, the new law moves accountability for English learners from Title III to Title I.

Goals – States must set long-term goals and interim progress indicators for, at a minimum, academic achievement on annual statewide assessments, high school graduation rates (including extended-year rates, at the state's discretion), and English language proficiency for English learners. These metrics must be developed for all students and separately for each subgroup of students. These metrics are used to show progress on statewide indicators and gap closures over time, and are reported on state and district report cards.

Annual Indicators – States must establish accountability and school improvement systems based on multiple indicators and must annually assess and report on student performance, disaggregated by subgroup, on:

- Annual assessments (which may include a measure of student growth);
- High school graduation rates;
- another statewide "academic" indicator for elementary and middle schools which may also be a measure of student growth;
- English language proficiency for English learners; and
- At least one additional indicator of school quality or student success (e.g. school climate/safety, student engagement, educator engagement, postsecondary readiness).

ESSA puts some bounds on the weighting of these annual indicators within a state's accountability system: Ac-

ademic indicators 1-4 in the list above must each have "substantial weight", and together, they must add up to a "much greater weight" than the school quality/student success indicator(s) in 5 above.

States and districts must also annually measure and report on the percentage of students taking the statewide assessments, disaggregated by subgroup, with a requirement that at least 95 percent of students participate annually. The state has the discretion to determine how the participation rate requirement factors into the statewide accountability system.

> In some ways, these accountability structures resemble AYP, but states also have greater discretion regarding multiple measures and weights of those measures, annual goals, data dashboards, and treatment of the 95 percent assessment participation rate requirements.\

Accountability Determinations and Identification for Support and Improvement

– Starting in the 2017-2018 school year, states must use all of the annual accountability indicators (#1-5), disaggregated by subgroup, to establish a system to annually differentiate public schools in the state into several categories, which require targeted district-led interventions in some schools and comprehensive, state-monitored interventions in others. States may add additional statewide categories of schools beyond "comprehensive" and "targeted" support and improvement if they choose.

- **Comprehensive Support and Improvement** – States must use the annual accountability indicators to identify a statewide category of schools - <u>at least once every three years</u> – that consists of:

  1. Schools in the lowest-performing 5% of all Title I schools in the state (or more, at the state's discretion); and
  2. High schools failing to graduate at least two thirds of their students (67% graduation rate or lower).

  In addition, schools are identified for comprehensive support and improvement if they have already been identified for "additional targeted support" based on having a "consistently underperforming subgroup", AND have a subgroup of students performing below the bottom 5% of Title I schools, AND have not achieved state-defined "exit criteria" from additional targeted support after a number of years determined by the state.

- **Comprehensive Support and Improvement Plan** – For each of these schools, *school districts* must develop a comprehensive support and improvement plan. This plan must:

  1. Be informed by all indicators in the statewide accountability system including student performance against the state's long-term goals;
  2. Include evidence-based interventions (which must meet a higher bar for "evidence-based" than in other parts of the bill, if funded by the state Title I set-aside for school improvement);
  3. Be based on a school-level needs assessment;
  4. Identify resource inequities to be addressed through plan implementation;
  5. Be approved by the school, school district, and state educational agency; and
  6. Be monitored and periodically reviewed by the state educational agency.

  If a school continues to be identified for comprehensive support and improvement for a number of years decided by the state (up to four years), the state must determine further intervention action.

- Optional School Transfer and Transportation – Districts may allow students in a school identified for comprehensive support to transfer to another public school, if such transfer is allowed under state law. A district that allows such transfers may use not more than 5% of Title I funds for resulting transportation costs. Students who are the lowest-achieving from low-income families must receive priority for transfer.

Targeted Support and Improvement

– The state must annually identify, and the school *district* must intervene in, any schools in which any subgroup of students is consistently underperforming, as defined by the statewide accountability system.

- Targeted Support and Improvement Plan – Each school identified for targeted support and improvement by the statewide accountability system must develop and implement a school-level targeted support and improvement plan based on the indicators and subgroups of students for which the school received its notification. The plan must:

  1. Be informed by all indicators in the statewide accountability system;
  2. Include evidence-based interventions (which must also meet the higher bar, if funded by the state Title I set-aside for school improvement);
  3. Be approved and monitored by the school district; and
  4. Result in additional action for underperformance over a period of time determined by the school district.

- Additional Targeted Support – Schools in which the performance of any subgroup of students is below the level used to identify schools for the bottom 5% in the state must be identified for additional targeted support and improvement. In addition to the requirements above, the improvement plan must identify and address resource inequities for these schools. Any of these schools that fail to achieve state-defined "exit criteria" after a period of time determined by the state must be reclassified by the state as Comprehensive Support and Improvement schools.

Funding for School Improvement Activities

- Required Title I State Set-Aside for School Improvement – ESSA eliminates a line item funding stream for School Improvement Grants (SIG) and replaces it with a required 7% state-level set-aside of Title I funds (or an amount equal to what the state received for school improvement funding in fiscal year 2015-2016, whichever is greater) for school improvement and support. This set-aside would support comprehensive, targeted, and other school improvement activities, as described above. At least 95% of these funds must pass through to school districts (which may include educational services agencies, consortia of districts, or statewide school districts), by formula or competition. If a school district approves, states may also directly provide the comprehensive and targeted support services to schools, through partners with expertise in evidence-based improvement strategies.

  The School Improvement awards may be for up to four years, which may include a planning year. States must give priority to school districts that:

  1. Serve high numbers or percentages of elementary and secondary schools identified for comprehensive or targeted support.

2. Demonstrate the greatest need, as determined by the state, and
3. Demonstrate the strongest commitment to using the funds to improve student achievement and outcomes in the lowest performing schools.

- Optional State Reservation for Direct Student Services – States may also reserve an additional 3 percent of their overall Title I funds to award grants to school districts serving the highest percentages of schools identified for comprehensive or targeted support and improvement. If made, these awards must be used to provide direct student services (through providers or the school district directly), which may include options such as credit recovery, AP/IB or dual credit courses, career and technical education courses not otherwise available, personalized learning, tutoring, and transportation for transfer to higher-performing public schools.

States and School District Plans and Continuous Improvement

– Similar to NCLB, ESSA will require each state and each school district to develop plans for how they will use federal funding to advance the goals of the bill, and have those plans approved by USED or the relevant state, respectively. Each state and local plan must be periodically reviewed by the state or school district and revised as necessary to reflect changes in strategies over time.

Report Cards and Data Reporting

– ESSA requires annual state and school district report cards (as in NCLB). Each state report card is required to include information on the state's accountability system, including the long-term goals and measurements of interim progress for all students and each of the subgroups; all indicators used in the accountability system; the minimum number of students for subgroups; the state system for meaningfully differentiating schools; schools in the state identified for comprehensive support and improvement; and the exit criteria for such schools. ESSA also maintains annual reporting on performance on academic assessments for all students and disaggregated data by subgroups, including economically disadvantaged students, students from each major racial and ethnic group, children with disabilities, English learners, students by gender, and students by migrant status, as well as by homeless students, children in foster care, and military-connected children. Additionally, the bill includes state reporting on the equitable distribution of teachers and elements required under the Civil Rights Data Collection, such as incidences of violence (including bullying and harassment) and access to preschool, among other factors.

With regard to school district report cards, school districts and schools must report the same information required under the state report cards, in addition to information on student achievement on assessments in each school compared to that of other students in the state or within the school district. Each school district is required to report on indicators for the school district as a whole and for each school served by the school district.

Prohibitions on the Secretary of Education

- Title I of ESSA prohibits the Secretary of Education from issuing any rules or regulations that are "inconsistent with" or go "beyond the scope" of the law in the areas of accountability, waivers, academic assessments, school support and improvement strategies/rules, and evaluation/measures of the quality of teachers, principals, and other school leaders. In particular, the Secretary is prohibited from requiring specific standards, assessments, school improvement strategies, evaluation systems, or actions. ESSA also prohibits the Secretary from defining any term that would be outside the scope of Title I-Part A intent. These prohibitions are not a part of NCLB or ESEA waivers, and will be a new factor in how ESEA is governed and how state implementation of a reauthorized law proceeds.

Teacher and Principal Quality and Evaluation - ESSA preserves Title II-Part A as a flexible fund, to support efforts to enhance teacher and leader quality, while being more explicit and adding an optional state set-aside for activities focused on principals and other school leaders, and creating a National Activities fund for technical assistance, evaluation, and competitive programs. Basic Title II-Part A grants flow by formula to states and to school districts, as under NCLB; although ESSA changes the formula to more heavily weight poverty and allows Title II-Part A activities to be carried out in partnership with a non-profit or for-profit entity. Notably, the term "highly qualified teacher" is eliminated in ESSA, with states setting the bar for teacher quality instead.

- **Teacher and Leader Evaluation and Support** – ESSA includes an allowable use of funds for "teacher, principal, and other school leaders evaluation and support systems that are based in part on evidence of student academic achievement." If Title II funds are used for these evaluation and support systems, they must include multiple measures of educator performance and provide "clear, timely, and useful feedback" to teachers, principals, and other school leaders. The law also allows states to develop or assist school districts in developing career advancement opportunities, differential pay, or other incentives (including using performance-based pay) to recruit and retain teachers, principals, and other school leaders in low-income schools and school districts, and teachers in high-need subjects.
- **Other Allowable Uses** – ESSA generally includes allowable uses of funds, including induction, mentoring, professional development, reform of teacher/leader preparation programs, and alternative routes for state certification (for certain individuals). Improving equitable access to effective teachers is also an allowable use of funds. Additionally, Title II allows for supporting efforts for principals, teachers, early childhood educators, and program administrators to jointly develop solutions to the challenges in helping students transition to elementary school, including addressing school readiness issues.
- **Title II-Part A Funding** – ESSA phases in over four years changes to the Title II-Part A formula from NCLB, shifting to a more significant weight on poverty (80% of the formula by fiscal year 2020, compared to the current 65% of the formula). School districts applying for funds must describe how they will prioritize funding for schools that are identified for comprehensive and targeted improvement and support and that have the highest percentage of low-income students. Also, the new law removes any cap on direct administrative costs for Title II-Part A.
  - Optional set-aside for Principal Quality – ESSA allows for an optional 3 percent state set-aside of Title II funds for activities supporting principals and other school leaders. A state is allowed to reserve the funds even if the reservation would reduce funding to any school district.
- **National Activities** – ESSA authorizes a $469 million fund for National Activities (which increases to $489 million in fiscal year 2020) through which USED will administer several programs:

1. The Teacher and School Leader Incentive Fund for states and districts to support human capital management systems – 49% of National Activities funds – decreasing to 47% by 2020;
2. The Literacy Education for All, Results for the Nation (LEARN) program to support comprehensive literacy instruction in early childhood education through grade 12 (similar to current Striving Readers grants to states) – 34% of National Activities funds, increasing to 36.8% by 2020;
3. The American History and Civics Education program for institutions of higher education, nonprofits, and consortia to support quality instruction in these areas – including national activities to improve instruction – 1.4% of funds; and

4. Programs of National Significance (a total of 15.4% of funds, decreasing to 14.8% in 2020), including:

   I. The Supporting Effective Educator Development (SEED) program for institutions of higher education, national non-profits, or partnerships to address challenges facing the field in teaching and leading (current program through appropriations) – 74% of Programs of National Significance set- aside;

   II. The School Leader Recruitment and Support program for states and districts focused on recruiting, preparing, supporting, and retaining effective principals and school leaders in high-need schools – 22% of Programs of National Significance set-aside;

   III. Technical Assistance and National Evaluation establishing:

      a. A comprehensive center on literacy instruction for students with disabilities (not less than 2% of the remaining set-aside);

      b. A STEM Master Teacher Corps (not more than 2% of the remaining set-aside).

Program Authorizations – ESSA consolidates a number of programs into a new block grant called Student Support and Academic Enrichment grants, including a school counseling program and a physical education program, among others. Under the block grant, funding is distributed by a formula to each state. Of the funds, not less than 95% is then distributed by formula to school districts, and the remainder is available for state activities and administrative costs. School districts will be required to (1) spend not less than 20% of funds on activities to support "well-rounded" educational opportunities for students (these activities could include support for college and career guidance counseling, music and arts programs, STEM programs, and accelerated learning programs, among other activities); (2) spend not less than 20% on activities to support safe and healthy students; and (3) use a portion of funds to support the effective use of technology. ESSA continues authorizations for a number of other individual programs, including the 21st Century Community Learning Centers (CCLC) program to support after school activities, and the Education Innovation and Research grants similar to the current Investing in Innovation (i3) program created through the American Recovery and Reinvestment Act (ARRA).

Funding – ESSA includes a series of modest increases to the total authorized funding level. Beginning in fiscal year 2017, the total authorized funding level is increased above the fiscal year 2015 appropriation and grows modestly in each of the following fiscal years through fiscal year 2020. The new law includes percent increases in the total authorized funding level for fiscal years 2017 and 2018 that are intended to be in line with the budget agreement passed in October 2015. For fiscal years 2019 and 2020, percent increases in the total authorized funding level are intended to mirror the Budget Control Act. ESSA includes a four-year authorization as opposed to the typical five-year authorization. ESSA's specific authorization amounts theoretically serve as limits on the amount of money that subsequently may be appropriated by Congress, although lawmakers can choose to appropriate more or less than the amounts authorized. Authorized levels may also be adjusted based on future changes to the Budget Control Act spending caps. Below are the authorized funding levels for key programs in ESSA.

- **Title I-Part A** – ESSA provides an authorized funding level of $15 billion in fiscal year 2017 for Title I-Part A, or a $602.5 million increase above the actual fiscal year 2015 appropriation. Additionally, the authorized level increases to nearly $16.2 billion for Title I-Part A by fiscal year 2020, or an increase of almost $1.8 billion over the actual fiscal year 2015 appropriation. Finally, there is no change to the Title I-Part A formula for allocating funds.
- **School District Funding Flexibility Pilot** – ESSA does not provide the authority for Title I portability; however, it does include a three-year weighted student funding pilot for up to 50 school districts to:
  - Consolidate federal, state, and local K-12 education funding;
  - Distribute funding to schools using a single per-pupil formula that more heavily weights low-income students, English learners, and other disadvantaged students; and
  - Report on disaggregated per-pupil expenditures and the number of students enrolled in each school in the pilot.

School districts may apply to the Secretary for approval for three years, and may renew for additional three-year periods, if they have met the funding equity and other requirements of the pilot. The pilot is authorized to expand to any approved school district in the 2019- 2020 school year, if most of the original pilots are meeting their requirements by then. The Institute of Education Sciences (IES) must evaluate the impact of the pilot regarding the equitable distribution of state and local funding and improved student achievement.

- **Title II** – ESSA provides an authorized funding level of $2.3 billion for each of the fiscal years 2017 through 2020 for Title II-Part A to supports grants to states and subgrants to school districts for improving teacher quality, a decrease of $54 million below the actual fiscal year 2015 appropriation. Title II also includes an additional authorized funding level of $468.9 million in fiscal year 2017 for National Activities (as described earlier), which grows to $489.2 million in fiscal year 2020.
- **Title IV** – Title IV of ESSA includes authorized funding levels for the Student Support and Academic Enrichment grants, as well as individual programs including the 21st CCLC program and the Education Innovation and Research program.
  - Student Support and Academic Enrichment Grants – ESSA provides an authorized funding level of $1.65 billion in fiscal year 2017 for the program. The authorizedfunding level decreases by $50 million to $1.6 billion for each of the fiscal years 2018 through 2020.
  - 21st CCLC Program – ESSA provides an authorized funding level of $1 billion in fiscal year 2017 for the program or a decrease of $151.7 million below the actual fiscal year 2015 appropriation. The authorized funding level increases by $100 million to $1.1 billion for each of the fiscal years 2018 through 2020.
  - Education Innovation and Research Grants – ESSA provides an authorized funding level of $70.5 million for these grants in each of fiscal years 2017 and 2018. The authorized funding level increases by $20.1 million to $90.6 million in each of fiscal years 2019 and 2020. This is similar to the Investing in Innovation (or i3) program which was funded at $120 million in fiscal year 2015.
- **Maintenance of Effort, and Supplement not Supplant** – The new law upholds the requirement for maintenance of effort by states and districts on K-12 funding in order to receive federal ESSA funds.

although a district may receive a grace period of one year if it has otherwise maintained fiscal effort in the preceding five years. Supplement not supplant language largely remains the same as under NCLB; however, under Title I states and districts only need to demonstrate compliance every two years instead of annually, and states and school districts will not have to show that individual costs related to Title I activities are supplemental.

- **Evidence-Based Practices** – Throughout ESSA, the term "evidence-based" practices is used in several places to define the nature of actions permitted or required of recipient states and districts. The law defines "evidence-based" as activities that demonstrate a statistically significant effect on improving student outcomes based on one of three tiers of evidence – strong, moderate, or promising – or demonstrate a rationale based on high-quality research findings that they are likely to improve student outcomes. This four-tiered definition applies in specific sections throughout the bill for both allowable and required uses of funds. However, interventions and improvement activities undertaken using school improvement state set-aside funds in Title I Section 1003 must meet one of the three more rigorous tiers (strong, moderate or promising).
- **Preschool Development Grants** – ESSA creates a new authorization for a Preschool Development Grant program. The competitive grant program is authorized at $250 million for each of the fiscal years 2017 through 2020, and will be administered by the U.S. Department of Health and Human Services jointly with USED. States will be able to use funds to develop, update, or implement a plan to increase collaboration or coordination among existing early childhood programs, and to increase participation of children from low-income families in high-quality early childhood programs. An initial one-year grant will be competitively awarded to assist states with development and coordination activities, followed by a three-year competitive renewal grant (which is not renewable at the end of three years). Renewal grants will allow approved states to award subgrants to increase access to high-quality services in a mixed delivery system (i.e. increase slots). For the first year of the renewal grant, states will be allowed to use not more than 60% of funds for subgrants. In the second and third year of the renewal grant, the percent will increase to allow not more than 75% of funds for subgrants.

While a Preschool Development Grant program was funded through USED beginning in fiscal year 2014, this will be the first time that the program is authorized as part of ESEA. The newly authorized Preschool Development Grant program restricts the Secretaries of Health and Human Services and Education from specifying, defining, or prescribing early learning and development guidelines, standards, specific assessments, and specific measures or indicators of quality early learning and care (among other restrictions), although it does encourage states to improve quality and to invest in professional development. Finally, the bill also requires the U.S. Department of Health and Human Services to submit a report to Congress two years from enactment (and every year thereafter) on possible elimination, overlap, and duplication of early childhood programs, similar to an existing requirement in the Child Care and Development Block Grant law.