ITEM: 6.4

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Federal Issues Update

Action: ______ Direction/Discussion: _________ Update: _________ Written:____x____

Delegates may contact Erika Hoffman. Legislative Advocate, in the Governmental Relations Department at ehoffman@csba.org or 916-669-2553, should they have any questions about this written item.

Summary

The update contains information on the following recent federal issues and activities:

- FY 2013 Sequestration and Federal Funding
- FY 2014 Federal Funding and Budget
- School Safety
- ESEA Waivers
- Out-of-School Suspension and Expulsion
- Special Education

Background

FY 2013 Sequestration and Federal Funding

Sequestration

In late February, the White House released a number of fact-sheets describing what would happen when the sequestration cuts go into effect. The fact sheets look at the impact of a number of programs, including teachers and schools, child care and Head Start. In a recent interview, Secretary Duncan estimated that nationwide, $725 million in Title I funds could get cut, putting 10,000 jobs at risk. States could also lose $598 million in special education funding, which equals approximately 7,200 jobs.

On February 28, 2013, the Senate attempted to move two pieces of legislation billed as "alternatives" to the automatic, across-the-board cuts known as sequestration. However, the Senate failed to formally end debate and call a vote on either measure. Shortly after, both the Senate and the House of Representatives left Washington for the weekend, leaving the sequester – automatic, across-the-board cuts – to kick in. The President gave the official order at 8:30 p.m. eastern time on March 1. The Office of Management and Budget (OMB) immediately issued orders notifying agencies to make spending cuts. The OMB published a memo telling agencies what to expect from this order and suggesting additional means of spending reductions including furloughs, layoffs, and terminating or delaying renewal of contracts.
Though some programs – like Impact Aid – would be affected immediately, most will not see the impact of cuts until the next federal allocation. For the purposes of bifurcated funding programs like

Title I of the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, and others, U.S. Department of Education (USDOE) officials have confirmed that funding cuts will be deducted from each state's July 2013 allocation.

California's Department of Education is waiting for direction from USDOE on the dollar amounts to apply to each federal program but those figures are not yet known, though sequestration cuts of about five percent are expected.

Federal FY 2013 Funding

On March 20, 2013, the Senate approved an amended version of the House's Continuing Resolution (HR 933) on a vote of 73-26. The next day the House approved the amended measure and sent it to the President for his signature. The continuing resolution (CR) completes the federal appropriations process for fiscal year (FY) 2013 and eliminated the possibility of a government shutdown.

The CR keeps most federal spending levels at the same as last year and also leaves intact the automatic cuts through sequestration – something many had hoped to avoid. Minor changes were made that will soften the blow to a number of programs. Some agencies like the Department of Defense received additional authority to determine how to implement cuts; this flexibility was not provided for the USDOE. Head Start will receive a boost of $33.5 million, but is still subject to sequestration, so the funding increase only marginally reduces the impact of sequestration.

The CR also contains a number of technical fixes and new provisions, including a provision that clarifies the allocation of funds under Part B of the Individuals with Disabilities Education Act (IDEA). USDOE had interpreted current law to require a permanent reduction in funding when a state fails to meet its Maintenance of State Financial Support (MSFS) requirement. With the technical fix in place, USDOE must now distribute funds without repeating the penalty for another fiscal year. This is good news for schools in light of the sequestration cut to IDEA.

With federal funding levels settled, agencies will now begin to finalize FY 2013 program funding levels. Under sequestration, federal agencies must issue information on their plan to implement cuts within 30 days, so more information on agency plans is expected by the end of March. However, by the time of this writing, USDOE has not yet released the final formula allocations for states and districts.

Additional Information:

- White House Sequestration California Fact Sheet: attached and http://www.whitehouse.gov/sites/default/files/docs/sequester-factsheets/California.pdf
- Office of Management and Budget Memo: http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-05.pdf

FY 2014 Federal Funding and Budget

With the passage of the FY 2013 CR, focus now turns to the FY 2014 budget. In early March, the House of Representatives passed its own budget resolution for FY 2014 which was authored by House Budget Committee Chairman Paul Ryan (R-WI). The House budget would cut federal funding in order to bring down the deficit and shrink the scope of federal programs, including programs in education and health. House budget suggests streamlining K-12 programs and would cut non-defense discretionary programs, which includes education, by $55 billion below the sequester level in FY2014.

On Saturday, March 23, 2013, the Senate passed its budget resolution Senate Concurrent Resolution (SCA) 8, by a vote of 50 to 49. More than 500 amendments to the measure were filed, many of which did not receive a vote. Reportedly, 101 amendments were considered.

While sequestration will remain in effect this year, the Senate budget resolution proposes to stop the sequester in FY 2014. It also provides $100 billion for infrastructure improvements and job creation, including $20 billion to jump-start repairs and technology infrastructure investments in schools. The Senate also agreed to an amendment sponsored by Senator Max Baucus (D-MT) which would establish an Office of Rural Education Policy within the USDOE. The office would contain a clearinghouse for information related to the challenges of rural schools and districts and would also provide technical assistance rules and regulations that impact rural schools and districts.

Additionally, the Senate agreed an amendment sponsored by Senator Mike Lee (R-UT), to support the reauthorization of the Payments in Lieu of Taxes program at levels roughly equivalent to property tax revenues lost due to the presence of federal land, as some of these funds go to school districts in more than 1,900 counties in 49 states and territories.

The next step for Congress is to reconcile SCR 8 with the House-passed budget resolution, which proposes to reduce federal expenditures by $4.6 trillion over the next 10 years. Pressure is being applied to both houses of Congress to appoint conferees to a joint conference committee to reconcile the budget differences, sooner, rather than later this year.

<u>President Obama's FY 2014 Budget Proposal</u>

On April 10, 2013, the President released his proposed budget for Fiscal Year 2014 (FY 2014), which begins October 1, 2013. The budget proposes total FY 2014 spending, including entitlements, of $3.77 trillion. Of that, approximately $1.1 trillion is in discretionary spending. The proposal cancels out the sequestration cuts, which if included would have resulted in $966 billion in discretionary spending. As proposed, the budget would increase overall funding for the USDOE by $3.1 billion from the FY 2012 level.

The budget would raise additional tax revenues by, among other things, adopting the so-called "Buffet Rule" which requires taxpayers with over $1 million in annual income to pay at least a 30 percent tax rate after charitable deductions. The proposed budget also raises $230 billion in revenue by adopting the "chained consumer price index" to calculate increases in Social Security and other program benefits. By eliminating the sequestration cuts, and including additional money for new initiatives, spending in FY 2014 would increase by $160 billion. The proposed new initiatives include additional money for child care, infrastructure and teacher rehiring programs.

While the President's proposal does not attempt to balance the budget, it would reduce the deficit as percentage of gross domestic products (GDP) to 1.7 percent by 2023. The deficit projected for FY 2014 is $744 billion or 4.4 percent of GDP.

Programmatic requests from the U.S. Department of Education include the following:

- Title I would be level funded at $14.5 billion.
- Teacher Quality grants would be level funded at $2.46 billion.
- Promise Neighborhoods would be funded at $300 million, an increase of $240 million.
- English Language Acquisition would be level funded at $732 million.
- Special education grants would be level funded at $11.57 billion.
- Impact Aid would be reduced from $1.29 billion to $1.22 billion – a 5.2 percent reduction.
- Career and Technical Education grants would be level funded at $1.12 billion.
- For Race to the Top, the Administration is proposing $1 billion - an increase of $451 million. This $1 billion would be dedicated to a "new College Affordability and Completion competition."
- For Investing in Innovation (i3), the Administration is proposing $215 million – an increase of $65 million. The increase for i3 would be for education technology research.

The budget contains a $415 million proposal for STEM (science, technology, engineering and math) innovation that includes a STEM Master Teacher Corps, expansion of math and science partnerships between school districts and colleges, and competitive grants to recruit and train effective STEM teachers for high-need schools.

It also includes a $300 million request for a new "High School Redesign program" to provide students with "challenging and relevant academic and career-related learning experiences that prepare them to transition to postsecondary education and careers." This would include programs such as dual enrollment for students.

One issue of concern is that the budget proposes to eliminate the funding for program's Payments for Federal Property" because these payments compensate [school districts] for lost property tax revenue due to the presence of Federal lands without regard to whether those districts educate any federally connected children as a result of the Federal presence."

Additional Information:

- FY 2014 Budget Overview: http://www.whitehouse.gov/omb/overview
- Educating a Competitive Workforce Fact sheet: http://www.whitehouse.gov/omb/budget/factsheet/educating-a-competitive-workforce
- Department of Education Budget Summary: http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/education.pdf

School Safety Issues

The President's FY 2014 Budget proposal contains two initiatives regarding school climate. The first is the consolidation of several programs, which award grants to "increase the capacity of states, districts, and schools to create safe, healthy, and drug-free environments." States and LEAs would be able to design their own strategies, which could include initiatives to:

(1) Improve school climate by reducing drug use, alcohol use, bullying, harassment, or violence;
(2) Improve students' physical health and well-being through comprehensive services that improve student nutrition, physical activity, and fitness; and

(3) Improve students' mental health and well-being through expanded access to comprehensive services, such as counseling, health, mental health, and social services.

Second, the new consolidated funding stream would include a national activities authority, under which the USDOE would reserve funds for several initiatives that are included in "Now Is the Time," the President's school safety strategy. These initiatives include $30 million for grants to states to help local districts develop, implement, and improve emergency management plans; $50 million for School Climate Transformation

Further, the budget would provide grants and related technical assistance to help schools train their teachers and staff to implement behavioral intervention strategies; and $25 million for Project Prevent grants to LEAs to help schools in "pervasively violent" communities.

<u>Mental Health Legislation</u>

In early April, Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Tom Harkin (D-IA) and Ranking Member Lamar Alexander (R-TN) jointly introduced the Mental Health Awareness and Improvement Act (S. 689).

The bill would reauthorize several mental health awareness and prevention programs at USDOE and the Department of Health and Human Services (HHS). It clarifies that Title I of the Elementary and Secondary Education Act (ESEA) funds could be used for early interventions related to mental health issues and for a local educational agency (LEA) to create or update its emergency management plan. Further, the bill would modify the allowable use of 21st century school funds to include the promotion of school-based mental health partnerships. Two new grants would provide $60 million in funding for USDOE's Safe and Drug Free Drug Free Schools programs, including the Youth Suicide Early Intervention grant and the Prevention Strategies and Mental Health and Substance Use Disorder Services on Campuses grant. Finally, the bill would provide $100 million for LEAs to develop best practices to train teachers and school personnel to respond to school emergencies and would encourage the development of school-wide prevention systems, like positive behavioral interventions and supports (PBIS).

The bill was approved by the HELP committee and negotiations are underway with Senate Majority Leader Harry Reid (D-NV) and members of the Senate Judiciary Committee to bring the proposal to the Senate floor for a vote.

NSBA was able to get amendments in S. 689 that will assure that school districts are not held responsible for the cost of providing treatment or referrals for students with mental health needs, protect students and staff in the event of an emergency, and clarify that liability protection is extended to school personnel providing school-based mental health services.

<u>School Safety Legislation</u>

Senators Barbara Boxer (D-CA) and Susan Collins (R-ME) have introduced S. 649, the *"School and Campus Safety Enhancements Act of 2013."* The bill would provide $40 million in competitive grants through the Department of Justice to school districts for uses such as strengthening security plans and installation of surveillance/security equipment. S. 649 would also increase the maximum federal share of the costs of a program provided by a grant to 80 percent.

Under the bill, grant applications would include a report that: (1) is signed by the heads of each law enforcement agency and school district with jurisdiction over the schools where the safety improvements will be implemented; and (2) demonstrates that each proposed use of the grant funds will be an effective means for improving school safety, as well as consistent with a comprehensive approach to preventing school violence and individualized to the needs of each school.

Additionally, the legislation would direct the Office of Community Oriented Policing Services Director and the Secretary of Education to establish an interagency task force to develop and promulgate a set of advisory school safety guidelines.

Congresswoman Lois Capps (D-CA) has introduced a companion measure to S. 649 in the House – H.R. 1470, the "School Safety Enhancement Act."

ESEA Waiver

Sequestration Waiver

USDOE has recently announced that it will offer another waiver of ESEA in an attempt to help states and districts deal with the effects of sequestration. The waiver, outlined in an April 11 memorandum to State Chiefs from Assistant Secretary Deborah Delisle (attached), would lift the restriction on how much funding a Local Educational Agency (LEA) can carry over from one year to the next.

Section 1127 of ESEA provides that an LEA may not carry over more than 15 percent of its Title I, Part A allocation. A state may waive this limitation if LEA's request is "reasonable and necessary," or a supplemental Title I, Part A allocation becomes available, but a state may only do this once every three years. USDOE has asserted that a reduced allocation due to sequestration may constitute a reasonable and necessary justification for such a waiver and that the recent uncertainty surrounding federal funds may make such waivers necessary more frequently – and that they may help LEAs prepare for continued reduced allocations. Those waivers would apply starting with funds from October 2012 carried over after September 30, 2013.

In order to request such a waiver, states must follow the waiver procedures outlined in ESEA – identifying the specific federal program affected and the statutory requirement to be waived; describing how the waiver will help LEAs increase student achievement and improve quality of instruction; and hold schools and LEAs accountable to existing achievement goals.

Elementary and Secondary Education Act (ESEA) Waiver

On February 28, 2013, the California Office to Reform Education (CORE) submitted an ESEA waiver application for its ten-member school districts. The CORE school districts include Clovis USD, Fresno USD, Garden Grove USD, Long Beach USD, Los Angeles USD, Oakland, USD, Sacramento USD, San Francisco USD, Sanger USD and Santa Ana USD.

The CORE districts believe they will be able to adopt reforms, especially on curriculum standards and teacher evaluations, which would meet the criteria that the USDOE has set for states.

At this time, USDOE has not decided if they will approve this district-level waiver. However, it has sent the CORE's application out for peer review.

While a number of analysts and states have noted that district-level waivers could create administrative headaches at both the state and federal level (which Secretary Duncan himself noted at a Senate Education hearing earlier in February), Secretary Duncan has made it clear that he considers district-level waivers to be a possible alternative in the event that they cannot come to an agreement with some states.

Additional Information:

- A copy of the CORE waiver application can be found at http://coredistricts.org/core-esea-waiver/

Out-of-School Suspension and Expulsion

Over the past few years, numerous reports and studies have highlighted the racial disparities in school suspension and expulsion as well as their negative impact on student achievement. The issue has come to the forefront here in California with various pieces of legislation that attempt to lessen the impact of suspensions and expulsions especially for students of color.
Research has shown that one of the main contributors to the increase in student out-of-school time and decreased learning time is often state and district approaches to discipline. Local policymakers have a critical role to play in reshaping classroom, district and community discipline practices and policies to create safe and supportive learning environments that (1) reduce out-of-school time, (2) provide better supports to teachers and administrators to address disciplinary challenges, and (3) engage parents, students, and community-based organizations in the development and implementation of more educationally sound and equitable policies and practices.

On April 16, 2013, NSBA, in collaboration with the National Opportunity to Learn Campaign, released a policy guide for school board members to help in the development of local positive alternatives to out-of school suspensions, *Addressing the Out-of-School Suspension Crisis*: A Policy Guide for School Board Members. The policy guide provides information on the adverse impact that out of school suspension has on academic achievement, especially as it relates to students of color and those with disabilities. In addition, the guide provides examples of strategies that school boards have used to promote student growth through positive school discipline reform models.

In addition to NSBA and the National Opportunity to Learn Campaign, the following organizations also participated in the development of the policy guide – the Council of Urban Boards of Education; the National Black Caucus of School Board Members; the National Caucus of American Indian/Alaska Native School Board Members; the National Hispanic Caucus of School Board Members; Opportunity Action and Solutions Not Suspensions.

Additional Information:

- The report can be found at: http://www.nsba.org/Board-Leadership/Surveys/Out-of-School-Suspension-Policy-Guide/Out-of-School-Suspension-Report.pdf

Special Education

The Government Accountability Office (GAO) recently released a report detailing the need for improvement in identifying racial and ethnic overrepresentation in special education. The study was requested by Congress after the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA). In its report, GAO recommends that the USDOE develop a standard approach for defining significant disproportionality to be used by all states.

Under IDEA, districts with “significant disproportionality” in the race and ethnicity of students identified for special education services must spend 15 percent of their IDEA funds to provide early intervening services to school age children who need additional academic and behavioral support. However, the law leaves the definition of significant proportionality to states, leading to inconsistent results. According to the GAO report, in 2010, states required about 2 percent of all districts to use IDEA funds for this purpose. GAO found that only 356 districts were required to provide services, and half of these districts were clustered in just five states. Seventy-three of these districts were in Louisiana alone. GAO also found that the way some other states defined overrepresentation made it unlikely that any districts would be identified and thus required to provide early intervening services.

GAO believes USDOE’s oversight of racial and ethnic groups’ overrepresentation in special education is hampered by the flexibility states have to craft their own definition of “significant disproportionality.” While USDOE periodically reviews states’ definitions as part of its onsite monitoring under IDEA, GAO found that the ED has not required a state to change its definition when it makes it unlikely that overrepresentation will be identified.

To address this issue, GAO recommends that the Secretary of Education develop a standard approach for defining significant disproportionality to be used by all states. This approach would allow flexibility to account for state differences and specify when exceptions can be made. In typical bureaucratic fashion, USDOE called on GAO to amend the recommendation and allow USDOE to “collect more information.” GAO is standing by its original decision.

Additional Information:

- The full GAO report is available online here http://www.gao.gov/products/GAO-13-137.

Attachment(s):

Federal Memorandum Regarding ESEA Waiver