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**MEMORANDUM**

**TO:** Interested Parties  
**FROM:** Penn Hill Group  
**DATE:** November 7, 2012  
**SUBJECT:** **2012 Election and Federal Education Policy**

The purpose of this memo is to summarize the results of the election and provide an initial analysis of the people, process, politics, and policies that are crucial to the consideration of federal education and job training policies in the next Congress and Administration. It is important to recognize that some of these dynamics will shift as agendas become clearer and leadership and committee positions get solidified, at which time we will provide an updated version of this memo at the start of the new Congress in January.

**Election Results**

After a long and tenuous campaign season, the election results are in and essentially reflect the status quo. President Obama will serve a second term as President, the Senate will remain in the control of Democrats and the House will remain in the control of Republicans.

	<u>President</u>	<u>House</u>			<u>Senate</u>	
Obama	332	Republicans	Democrats	Democrats	Republicans	Independent
Romney	206	234*	196	53	45	2

*6 House Races Undecided  
 \*Includes Louisiana 3<sup>rd</sup> District  
 seat that will be decided in  
 December Republican runoff.*

While the party-makeup of the new Congress will essentially be the same as it was in the 112<sup>th</sup> Congress, at least one-third of the 113<sup>th</sup> Congress will feature House members with less than three years of experience and for the first time ever, white males no longer constitute the majority of Democrats in the House. Across the board there will likely be greater polarization among the two parties in both chambers – with liberals gaining among Democrats and conservatives gaining among Republicans. It is likely that there will be greater unity among Republicans than among Democrats (especially in the Senate).

**Impact on Education and Job Training Policies (People, Process, Politics, and Policy)**

To help examine the impact of the election, Penn Hill Group provides an analysis of the people, process, politics and policies (which we call the four “P”s) that are crucial to the consideration of federal education and job training policies in the coming years. In general, the four “P”s are:

people – the key policy makers who impact federal education policy; process – the often obscure, but always crucial, procedures used in Washington to make policy; politics – a careful look at the interests of key education leaders and how they are impacted as policy is made; and finally policy – the changes in laws, regulations, and other policies that are ultimately produced by the federal government. In our experience, most – if not all – of the “P”s must be in general alignment for major bills to pass Congress and be signed by the President. Almost none of the “P”s have been in alignment for the past few years. As a result, reauthorization of major education and job training legislation has stalled. Below is an analysis of how the four “P”s line up for the new Congress and Administration.

## PEOPLE

Background – In the realm of federal policymaking, like so many other occupations, personnel decisions are just as important as policy positions. Having the right person in the right job – be it a Committee Chairman, Ranking Member, key staff person, or Administration official – can be the difference between accomplishment and disappointment. In both Congress and the Administration, we expect a good number of the key federal policy makers to remain in place from the line-up last year. There will be some important changes, however, which are described below:

- The President and the Administration – It is important to note that even though the President was re-elected, his Administration will be reshuffling some of its personnel line-up. In an Administration more willing to push the limits of Executive authority in education policy than any in history, who fills key policy slots at the White House, OMB, and the Education Department, will have a critical impact on education policy throughout the nation.

Education Secretary Arne Duncan has expressed interest in staying in a second term, and it is also likely that Labor Secretary Hilda Solis will remain in place. However, with the impending start of any second term, it is possible that a number of key positions immediately below the Secretary and other positions impacting education policy could change hands. Turnover in some important education policy jobs at OMB and the White House Domestic Policy Council is also possible.

- Congress – In the House, the Republicans will maintain their majority with at least 234 Members (Republicans controlled the House 242-193 going into the election). Currently, Democrats have maintained 192 seats with the outcome of 9 races still too close to call. In the Senate, Democrats will maintain their majority with at least 53 Senators (plus two Independents expected to caucus with the Democrats). Democrats controlled the Senate 53-47 going into the election. Currently, Republicans have maintained 45 seats with the outcomes of two races still too close to call.
  - Leadership – Elected leadership will likely remain the same in the House. The House Republican Conference will choose its leadership team the week of November 12 with John Boehner (R-OH) and Eric Cantor (R-VA) running unopposed. The House Democratic Caucus will hold its leadership election the week after Thanksgiving with Nancy Pelosi (D-CA) and Steny Hoyer (D-MD) likely to remain in their current positions.

On the Senate side, Harry Reid (D-NV) will remain as the Majority Leader and Sen. Mitch McConnell (R-KY) will stay the Minority Leader. It is possible a



leadership race for Senate Majority Whip takes place between Sen. Dick Durbin (D-OH) and Sen. Chuck Schumer (D-NY). On the Republican side, Sen. Jon Kyl (R-AZ) retired and will no longer serve as Whip. Sen. John Cornyn (R-TX) has been mentioned as a potential replacement.

- Committees – Although not due to the elections, there will likely be a significant amount of change on the Committees that deal with education and job training issues, the full extent of which we will not know until early next year. Although the House Republican Committee posts will likely be selected the week of November 26, the House Democrats will not organize their Committee assignments until January. The Senate Committee posts will be selected later this year and early next year.
- House Education Committee –On the House Committee on Education and the Workforce, Rep. John Kline (R-MN) will continue as Chairman, and Rep. George Miller (D-CA) will continue to serve as the Ranking Member. Most of the key staff on both sides of the aisle are likely to stay.

However, the Committee is likely to get a significant number of new Members from both parties to replace those who have retired or are moving to other Committees. The Republican Members that will no longer serve on the Committee are Rep. Todd Platts (PA) and Rep. Judy Biggert (IL) who lost in her bid for re-election. They were perhaps the two most moderate Members of the Committee and often worked across party lines on education and workforce issues.

Democrats who will no longer serve on the Committee include: Rep. Dale Kildee (MI) and Rep. Lynn Woolsey (CA), who are both retiring. Rep. Dennis Kucinich (OH) and Rep. Jason Altmire (PA) both lost in their primaries, and Rep. Mazie Hirono (HI) was elected to the Senate. In particular, the loss of Rep. Kildee, who has played a major role in the consideration of all education issues for the past several decades, could have a significant impact on the Committee’s deliberations going forward.

While we do not know for certain who will serve as Subcommittee Chairs and Ranking Members, we expect Rep. Foxx (R-NC) to remain on the Committee and head up the subcommittee focused on higher education and job training. We also believe it is likely that Rep. Hunter (D-CA) will remain on the Committee and head up the Committee focus on K-12 issues.

The lineup for Ranking Members is less clear given the departure of Rep. Kildee (D-MI) and Rep. Lynn Woolsey (D-CA), but will likely include Rep. Andrews (D-NJ), Rep. McCarthy (D-NY), Rep. Hinojosa (D-TX), and possibly Rep. Tierney (D-MA).

Below are the election outcomes of the current Members of the House Education and the Workforce Committee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Kline, John	R	MN	Won re-election



<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Petri, Thomas E.	R	WI	Won re-election
McKeon, Buck	R	CA	Won re-election
Biggert, Judy	R	IL	Defeated
Platts, Todd Russell	R	PA	Retiring
Wilson, Joe	R	SC	Won re-election
Foxx, Virginia	R	NC	Won re-election
Goodlatte, Bob	R	VA	Won re-election
Hunter, Duncan D.	R	CA	Won re-election
Roe, Phil	R	TN	Won re-election
Thompson, Glenn 'GT'	R	PA	Won re-election
Walberg, Tim	R	MI	Won re-election
DesJarlais, Scott	R	TN	Won re-election
Hanna, Richard	R	NY	Won re-election
Rokita, Todd	R	IN	Won re-election
Bucshon, Larry	R	IN	Won re-election
Gowdy, Trey	R	SC	Won re-election
Barletta, Lou	R	PA	Won re-election
Noem, Kristi	R	SD	Won re-election
Roby, Martha	R	AL	Won re-election
Heck, Joe	R	NV	Won re-election
Ross, Dennis	R	FL	Won re-election
Kelly, Mike	R	PA	Won re-election
Miller, George	D	CA	Won re-election
Kildee, Dale E.	D	MI	Retiring
Andrews, Robert E.	D	NJ	Won re-election
Scott, Robert C.	D	VA	Won re-election
Woolsey, Lynn C.	D	CA	Retiring
Hinojosa, Ruben	D	TX	Won re-election
McCarthy, Carolyn	D	NY	Won re-election
Tierney, John F.	D	MA	Won re-election
Kucinich, Dennis J.	D	OH	Defeated in Primary
Holt, Rush D.	D	NJ	Won re-election
Davis, Susan A.	D	CA	Won re-election
Grijalva, Raul M.	D	AZ	Won re-election
Bishop, Timothy H.	D	NY	Won re-election
Loeb sack, Dave	D	IA	Won re-election
Altmire, Jason	D	PA	Defeated in Primary
Fudge, Marcia	D	OH	Won re-election
Hirono, Mazie	D	HI	Ran for Senate (won)



- House Appropriations – There will be several key changes to the House Appropriations Committee in the 113<sup>th</sup> Congress. Rep. Norm Dicks (D-WA), the current Ranking Member of the Full Appropriations Committee, will be retiring at the end of this year and there is a battle to replace him between Rep. Marcy Kaptur (D-OH) and Rep. Nita Lowey (D-NY).

On the Labor/HHS/Education Appropriations Subcommittee there will be a new Chairman to replace Rep. Denny Rehberg (R-MT), who left to run for the Senate and lost. Rep. Rodney Alexander (R-LA) has been mentioned as a possible replacement for Rehberg and it is expected that Rep. Rosa DeLauro will continue as Ranking Member of the Labor/HHS/Education Subcommittee (regardless of the outcome of the race for Full Committee Ranking Member). All other current members of the subcommittee won in their re-election bids and Rep. Flake (R-AZ) won in his bid for Senate.

Below are the election outcomes of the current Members of the House Labor/HHS/Education Appropriations Subcommittee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Rehberg, Dennis	R	MT	Ran for Senate (Defeated)
Lewis, Jerry	R	CA	Retiring
Alexander, Rodney	R	LA	Won re-election
Kingston, Jack	R	GA	Won re-election
Granger, Kay	R	TX	Won re-election
Simpson, Mike	R	ID	Won re-election
Flake, Jeff	R	AZ	Ran for Senate (won)
Lummis, Cynthia	R	WY	Won re-election
DeLauro, Rosa	D	CT	Won re-election
Lowey, Nita	D	NY	Won re-election
Jackson, Jesse	D	IL	Won re-election
Roybal-Allard, Lucille	D	CA	Won re-election
Lee, Barbara	D	CA	Won re-election

- Senate HELP Committee – The Senate Education line-up will change in a few key spots. The Health, Education, Labor and Pensions (HELP) Committee, the key Senate education policy Committee, will continue to be chaired by Sen. Tom Harkin (D-IA). However, the new Ranking Member will likely be Sen. Lamar Alexander (R-TN), replacing Sen. Mike Enzi (R-WY) who must step down due to Senate Republican rules that set term limits for serving as ranking member on a single committee. In terms of overall numbers, the ratio appears likely to remain the same – 12 Democrats to 10 Republicans, with a few new members likely as a result of Committee reassignments and retirements. Sen. Jeff Bingaman (D-NM), who has played a major role on education issues, is retiring and his absence will clearly be felt. With significant turnover on Sen. Harkin’s staff before the election, and a number of new staff members who will potentially be brought in by likely new Ranking Member Alexander, this Committee may take a bit more time to get up and running at full speed.

Below are the election outcomes of the current Members of the Senate Health, Education, Labor and Pensions (HELP) Committee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Harkin, Tom	D	IA	*
Mikulski, Barbara A.	D	MD	*
Bingaman, Jeff	D	NM	Retiring
Murray, Patty	D	WA	*
Sanders, Bernard	I	VT	Won re-election
Casey, Robert	D	PA	Won re-election
Hagan, Kay	D	NC	*
Merkley, Jeff	D	OR	*
Franken, Al	D	MN	*
Bennet, Michael	D	CO	*
Whitehouse, Sheldon	D	RI	Won-re-election
Blumenthal, Richard	D	CT	*
Enzi, Michael B.	R	WY	*
Alexander, Lamar	R	TN	*
Burr, Richard	R	NC	*
Isakson, Johnny	R	GA	*
John McCain	R	AZ	*
Hatch, Orrin G.	R	UT	Won-re-election
Murkowski, Lisa	R	AK	*
Paul, Rand	R	KY	*
Roberts, Pat	R	KS	*
Kirk, Mark	R	IL	*

*\* No election this cycle*

- Senate Appropriations – On the Senate Appropriations Committee, the Chairman of the Full Committee Daniel Inouye (D-HI) and the Chairman of the Subcommittee on Labor/HHS/Education Tom Harkin (D-IA) are both likely to retain their roles, and Ranking Member Thad Cochran (R-MS) will remain on the Committee but will step aside as Ranking Member. Interestingly, Sen. Lamar Alexander (R-TN), in addition to being the new Ranking Republican on the HELP Committee, will be a senior member of the Education Appropriations Subcommittee – which means that with Sen. Harkin as Chairman of both the key authorizing and appropriations Committee and Subcommittee, and Sen. Alexander serving in key positions on these same bodies, both will be uniquely positioned to impact both education policy and funding debates. Only one Member of the Subcommittee was up for re-election this cycle, Sen. Brown (D-

OH), who won in his bid. Sen. Herb Kohl (R-WI) was the only retirement on the Subcommittee.

Below are the election outcomes of the current Members of the Senate Labor/HHS/Education Subcommittee:

<u>Member</u>	<u>Party</u>	<u>State</u>	<u>Status</u>
Harkin, Tom	D	IA	*
Inouye, Daniel	D	HI	*
Kohl, Herb	D	WI	Retiring
Murray, Patty	D	WA	*
Landrieu, Mary	D	LA	*
Durbin, Richard	D	IL	*
Reed, Jack	D	RI	*
Pryor, Mark	D	AR	*
Mikulski, Barbara	D	MD	*
Brown, Sherrod	D	OH	Won re-election
Shelby, Richard	R	AL	*
Cochran, Thad	R	MS	*
Hutchison, Kay Bailey	R	TX	Retiring
Alexander, Lamar	R	TN	*
Johnson, Ron	R	WI	*
Kirk, Mark	R	IL	*
Graham, Lindsay	R	SC	*
Moran, Jerry	R	KS	*

*\* No election this cycle*

Overall “People” Analysis – President Obama has had considerable success in driving an education policy agenda through the Executive – not Legislative – Branch. Even if there are some shifts in personnel, the Administration is likely to keep a similar team and game plan to create and push policy out through the Department of Education.

Unlike the beginning of the 112th Congress when there were a number of new key players in education policy at both the Member and staff levels, there is likely to be a more stable personnel situation in the coming months. The two most notable changes, as noted earlier, are on the Republican side with Sen. Lamar Alexander (R-TN) taking over as Ranking GOP Member of the HELP Committee, and a new House GOP Member (potentially Rep. Rodney Alexander (R-LA)) who will be tapped to lead the House Labor/HHS/Education Appropriations Subcommittee.

The more stable personnel situation in Congress may help to create an environment more conducive to passing education legislation. With two years under their belts as Chairmen in the Senate and House Education Committees, Sen. Harkin (D-IA) and Rep. Kline (R-MN) have much more experience running their committees and learning to deal with political concerns, policy challenges, interest groups, and the Obama Administration. House Ranking Member



George Miller (D-CA) has considerable experience on these same issues and can be a productive force to get things done if he chooses to be. And, finally, adding former Education Secretary Lamar Alexander (R-TN), an acknowledged GOP leader and potential deal maker on education issues, to the mix in an official role as a top education policy maker can only increase the possibility of Congressional accomplishment on education legislation.

At the staff level, Chairman Kline (R-MN) and Ranking Member Miller (D-CA) will likely maintain staffs with significant experience. For Chairman Harkin's (D-IA), in the last six months there was a switch in the staff at the Committee leadership level as well as many changes in the education staff. The primary education staff that led Elementary and Secondary Education Act (ESEA) reauthorization efforts in the last Congress are no longer in place. In addition, if Sen. Alexander (R-TN) does take the Ranking Member position, there will be some hiring of additional staff. To the extent staff experience matters, the House has an advantage and the Senate will take some time to ramp up.

Finally, we have saved the most important policy players for last: the Congressional leadership, particularly the majority in the House and Senate. In today's Congress, largely because of the procedural gridlock of the Senate and the need to keep a majority together in a politically divided House, more decisions than ever are made at the Leadership level and by leadership staff about what issues and legislation see the light of day past the committee level. On education, generally, the leadership does not get involved in the daily details of committee work. However, leadership in both the House and Senate wield significant power over noteworthy issues, particularly policies that affect budget discussions (like Pell Grants), as well as whether – and what – legislation is considered on the Floor.

The Speaker of the House, Rep. John Boehner (R-OH), has significant experience with education policy issues having chaired the House Education and the Workforce Committee before assuming his current position. His staff is extremely well versed in education issues. Majority Leader Cantor has also been involved in education issues, and his staff has been particularly active on education spending issues that receive significant press and political attention like the student loan interest rate and the Pell Grant shortfall. In general, however, the House GOP leadership has not chosen to put education issues front and center for the House, in our view largely due to the difficulties of finding a solid consensus on education in their Conference and their unwillingness to have an extended battle with congressional Democrats on several policy and funding issues.

The House Democratic leadership, led by Rep. Nancy Pelosi (D-CA) and Whip Steny Hoyer (D-MD) may make education legislation a higher priority but the minority has no real power in the House to force consideration of its agenda. As a result the House Democratic leadership plays a much less significant role on education issues from a procedural standpoint.

In the Senate, Majority Leader Harry Reid (D-NV) controls the floor schedule and determines whether or not education bills are considered by the full Senate. Neither Sen. Reid, nor his Deputy Dick Durbin (D-IL) are particularly known for their involvement in education – though Sen. Durbin (D-IL) has been involved in DC Opportunity Scholarships, the fight against for-profit education, and education technology issues. Because Sen. Reid and President Obama are from the same party, the Majority Leader consults closely with the Administration regarding the bills that are brought to the floor of the Senate for debate. During the last session of Congress, Sen. Reid (likely in close consultation with the President) chose not to bring education legislation, such as the bipartisan Committee-reported ESEA reauthorization bill, to the floor and make it a top priority.

The Republican Minority Leader in the Senate, Sen. Mitch McConnell (R-KY), has considerably more power than the minority in the House. Sen. McConnell is not particularly known for his involvement in education issues, though he has a key senior staff member who served on the HELP Committee for several years and played (and still plays) a critical background role in education policy. McConnell also has not expressed an overwhelming desire to bring education legislation to the Senate floor, as there is considerable internal division in his own Conference that he would have to attempt to bridge in order to take full advantage of his position as Minority Leader.

## PROCESS

Background – Process is all about the “inside baseball” ways in which the federal policy making machine works (or fails to work). For many, perhaps most, who care about education issues, the policy making process is nearly incomprehensible – perhaps no more so than in today’s world of waivers, regulations, sub-regulatory guidance, new grant requirements, appropriations and budget process, and congressional attempts at rewriting laws. Yet, process issues often have as much of an impact on education policy as any of the other four “P”s. Briefly, here are some examples of how process issues have impacted education policy in recent years:

- The number one procedural hurdle in today’s Congress is the need to almost always obtain 60 votes in the U.S. Senate to pass major laws. Along with several arcane Senate rules, this situation makes it extremely difficult to bring legislation to the Senate floor for a vote as various time-consuming procedural road blocks are put in place by a bill’s opponents to delay or postpone consideration of various bills. As a result, Senate procedure has become one of the most important reasons for Congress’s failure to pass major legislation – including education reauthorizations, budgets and appropriations bills – under regular order.
- Many Senators in both parties consider themselves to be experts on education policy and often have their own education proposals to offer as amendments on the Senate floor or standalone bills. Because of this, education bills tend to take a very long time to consider in the full Senate. In fact, the No Child Left Behind Act (the last reauthorization of ESEA to be brought to the Senate floor) took longer than all but a few bills in the history of the Senate to pass. Because education bills do not pass easily in the Senate, there seems to be more reluctance than ever to bring them up for a vote.
- Because there are so many procedural difficulties preventing action, the few education issues that have been tackled by Congress in recent years tend to happen as a result of “procedural workaround.” These workarounds include passing the student loan interest rate fix as part of a highway bill extension; including other student loan provisions in healthcare legislation; and making policy changes to the Pell Grant and after school care programs; as well as making significant changes to program authorizations including School Improvement Grants, the Teacher Incentive Fund, i3, Race to the Top, Promise Neighborhoods, and the Charter Schools Program as part of an appropriations bill – all of which are technically procedural “no-no’s.”
- The granddaddy of all specialized Congressional procedures is “budget reconciliation.” The reconciliation process eliminates the need for 60 votes for the Senate to move forward on legislation and limits debate on amendments ultimately guaranteeing a final,

timely vote on the bill itself. This process is limited, however, to provisions that have a direct impact on tax and mandatory spending issues, and therefore does not often directly affect a large majority of education policy issues, particularly in the K-12 arena. Reconciliation is, however, often used to change student loan policies, and has been used in the past to pass changes to mandatory education programs that include a portion of the Pell Grant program, school lunch, and welfare reform.

- Because of the break-down in Congress, the Administration has chosen to use the procedural options that are available to the Executive Branch – and has done frequently these past few years. They have promulgated a number of important wide ranging regulations (largely in higher education), inserted highly impactful new provisions in grant programs like Race to the Top and i3 (that were created through appropriations language, not authorizing language) to leverage their policy goals, and instituted a state waiver process that has changed the face of No Child Left Behind. All of these actions have been taken largely without specific Congressional authorization or formal input. It should be noted, however, that the Administration’s initial waivers of NCLB only last for up to three years (unless the Administration decides to extend them), and thus the process does not constitute the relatively stable policy change that would be included in a Congressional reauthorization.

Overall “Process” Analysis – In addition to the issues discussed above there are several other significant factors that will complicate education policy-making progress next year including:

- The sheer number of education bills that are due – or past due – to be considered, which will constitute a huge scheduling challenge if Congress decides to make education a priority;
- The even more closely divided partisan makeup of the Senate after the elections which will make it even harder to reach the 60 vote threshold;
- And, the press of other higher-priority issues – largely related to the federal budget – that must take precedence before the President and Congressional leadership can turn its attention to issues like education.

In our view, this means that major stand-alone education legislation will only happen with a full-court press by the Leadership in Congress (especially the Senate), and ultimately, the President himself, to surmount the procedural hurdles facing education bills. Up to this point, this kind of leadership has been limited.

Lacking a major effort by the President and Leadership, we look for education policy to be made in a variety of piecemeal procedural ways that can have just as much impact as new legislation:

- While K-12 and Higher Education reauthorizations may simply be too tough to accomplish early on, Congressional reauthorizations of “second-tier,” less controversial issues may be possible – like the Workforce Investment Act (WIA), Career and Technical Education, the Education Sciences Reform Act (ESRA), and Child Care Development Block Grants (CCDBG).
- If a budget deal is finally reached between the President and Congress, there is a good chance that it would be taken up in Congress using the reconciliation process. This type

of all-encompassing bill could include provisions that make key policy changes to the student loan and Pell Grant programs, as well as further adjust overall discretionary program funding level limits that will have a dramatic impact on funding for most, if not all, federal education programs.

- With or without a budget agreement, there will continue to be the need to pass appropriations bills of some sort, and as time goes on, we believe that Congress could use the appropriations process to fight – and sometimes win – education policy battles with a President who will be “lame duck” during his second term.
- The Administration will likely continue to take full advantage of its powers to regulate education programs and pursue policy goals through other administrative means (such as setting new conditions under formula and competitive programs). We will look for continued efforts to do so very soon after his re-election, beginning with issues like teacher education and distance education, and further refining the K-12 waiver process.

The bottom line is that we expect the Obama Administration to be once again in control of the policy-making process – and therefore able to set the policy agenda – right up until the day when Congress proves it can pass bills that can be signed into law. But in the end, there is only so much an Administration can do to implement significant and lasting policy change in education without the involvement of Congress. This one fact gives us hope, and could bring Congress and the President to agreement on major legislative changes at some point during the next four years.

## **POLITICS**

Background – The politics of education continue to be as jumbled as ever, with both parties facing internal divisions on education issues that must be surmounted before attempting to reach the kind of consensus between the parties needed to pass major education legislation.

In some ways, the Democrats appear to be very united on education issues. Almost to a person, Democrats in Washington agree on the importance of a strong federal role in education. When it comes to the budget, most Democrats stand behind the idea of increasing federal education funding to one degree or another – or at the very least preventing cuts to most major existing programs.

This internal consensus appears to wither somewhat when it comes to several key education policy issues, however. There are significant differences within the Democratic Caucus regarding testing and accountability in schools, school choice and charter schools, tying teacher evaluation and pay to student achievement levels, and the role of for-profit companies in education, among others. These differences are often exacerbated by the competing interests of a broad array of outside education entities and organizations.

There are also noticeable differences between the Obama Administration and Congressional Democrats on many of these same issues. The differences between Democrats explain why the Senate Education Committee passed a bipartisan ESEA reauthorization bill that never even made it to the Senate floor. The fact is, while Republicans and Democrats squabbled about various provisions, in the end it was the Administration’s behind the scenes opposition to the bill that caused the Senate Democratic Leadership to kill the ESEA reauthorization bill. Until the splits between and among Congressional Democrats and the Obama Administration are overcome, it is difficult to see how it is in the political interests of the Democrats to wage

extended legislative fights over anything but federal education funding, or the handful of other issues on which they are relatively united.

Federal education policy gets far less attention from Republicans than it does from Democrats. By and large, Republicans at the federal level believe education is more of a state and local responsibility, and are skeptical by nature of federal programs. Republicans are far less mindful of education policy detail than their Democratic counterparts, and less likely to have the heated internal battles on education policy details that occur behind the scenes in Democratic circles.

Republicans also have significant inter-party splits. After all, this is the party who's last President, and its current Speaker, championed the "No Child Left Behind Act" while at the same time had a party platform that advocated eliminating the Department of Education in the not too distant past. Internal GOP debates are at times focused on education policy issues like public and private school choice, teacher performance pay, and testing and accountability, but they are much more likely to stray into broader philosophical areas – i.e. whether or not there should even be federal education programs – that are already settled on the Democratic side of the aisle.

Furthermore, there are a significant number of Republicans who are unlikely to vote for *any* ESEA reauthorization, and who want to dramatically scale back the federal role in higher education, job training, and pre-K. There are others whose interest in federal education policy extends only to social issues like sex education and school prayer. At the same time, there are other Republicans who believe in a federal role in education, albeit a more scaled back version than most Democrats. These Republicans support increased accountability for taxpayer dollars and using federal resources to leverage change in teacher unions, colleges and education bureaucracies that fail to serve the needs of students and families. These Republican votes are always in play for the Democrats, particularly if Democrats don't overplay their hand on federal accountability and funding issues. But, all in all, a public debate among Republicans on education issues is likely to drive a wedge between various factions of the party – this is why the Republicans have been no more eager to have a full debate on education policy on the House floor than have the Democrats in the Senate.

Overall "Political" Analysis – For the past few years, it has not been in the political interests of either party to have a full-fledged education policy debate in Congress because neither has quite figured out where their own interests lie. Furthermore, there has not been an overwhelming clamor among interest groups involved in education – and nothing like the coalition led by the business and civil rights communities that existed during the NCLB reauthorization – that has united to push Congress from the outside up to this point. And, again, there has not yet been an "all hands on deck" call by the Administration to pass a major, controversial education law.

Until this occurs, it is hard to imagine either an HEA or ESEA reauthorization being signed into law next year, though there may be an opening for other less controversial bills like vocational education, ESRA, or perhaps even WIA to skirt through this process.

## **POLICY**

Background – The last session of Congress was one of the least productive in memory on education policy. The accomplishments were primarily limited to short-term fixes to the Pell Grant shortfall and preventing the automatic doubling of federal subsidized student loan interest rates. Overall, despite attempts to reauthorize ESEA and WIA, not one education or job training



authorization bill made it to the Floor for consideration, with the exception of a charter school bill that was passed by the House. Nor was there a significant amount of education policy driven through appropriations bills, which has been common up until recently.

As a result of this inaction, the Obama Administration was given nearly complete latitude to carry out many of their key policy initiatives with very little direction from Congress.

For better or worse, and there are strong arguments to be made on both sides, the Obama Administration has been in the driver's seat on education policy from the day the President took office. With the passage of the American Recovery and Reinvestment Act (ARRA) in the first few months of the President's tenure, the Administration set the agenda for education policy for the next four years of his term. ARRA included funding for programs like Race to the Top, Investing in Innovation (i3), School Improvement Grants, and dramatic increases in funding for teacher pay-for-performance initiatives and investments in education data – all this while also providing record amounts of funding to state and local budgets hit by the recession and through stalwart federal programs like Title I, IDEA, and Pell Grants, among others. ARRA gave Education Secretary Duncan unprecedented authority to set the Federal education policy agenda, and by most measures, he succeeded throughout the early years of the Obama Administration.

However, the Administration was not quite as successful in convincing Congress – under either Republican or Democratic control – to pass its plan for reauthorization of ESEA, outside of ARRA (including ongoing funding for RTTT and i3) and the student loan provisions that were included in the President's Health Care bill.

As the 113<sup>th</sup> Congress convenes, we are looking at what we believe to be an unprecedented situation in which nearly every single education and training bill is up for reauthorization during the next two years (see chart below). Thus, in a season of policy uncertainty, the single biggest question in the world of federal education policy is this: will Congress be able to get its act together to pass *any* education legislation?

If the answer is no, Congress is likely to become largely irrelevant; a mere distraction to an unchecked Administration with a free hand to implement its education agenda. If the answer is yes, Congress will be *very* busy on education issues. Either way, federal education policy will be in for significant change in the next few years.

Authorization Expired	Legislation
FY 2012	<ul style="list-style-type: none"> <li>• Carl D. Perkins Career and Technical Education Act</li> <li>• Head Start Act</li> <li>• Native American Programs Act</li> </ul>
FY 2011	<ul style="list-style-type: none"> <li>• Older Americans Act</li> <li>• Title II of the Higher Education Act</li> </ul>
FY 2010	<ul style="list-style-type: none"> <li>• Assistive Technology Act</li> <li>• Child Nutrition Act, which includes the Richard B. Russell National School Lunch Act</li> <li>• Individuals with Disabilities Education Act (IDEA), other than Part B (Grants to States)</li> <li>• Welfare Reform, through the Temporary Assistance for Needy Families (TANF)</li> </ul>
FY 2009	<ul style="list-style-type: none"> <li>• Special Olympics Sport and Empowerment Act</li> </ul>

FY 2008	<ul style="list-style-type: none"> <li>• Abandoned Infants Assistance Act</li> <li>• Child Abuse Prevention and Treatment Act (CAPTA)</li> <li>• Education Sciences Reform Act, which includes the Institute for Education Sciences</li> <li>• Family Violence Prevention and Services Act</li> <li>• National Assessment of Educational Progress (NAEP) Authorization Act</li> </ul>
FY 2007	<ul style="list-style-type: none"> <li>• Developmental Disabilities Assistance and Bill of Rights Act</li> <li>• Elementary and Secondary Education Act (ESEA)</li> <li>• Juvenile Justice and Delinquency Prevention Act</li> </ul>
FY 2003	<ul style="list-style-type: none"> <li>• Adult Education and Family Literacy Act</li> <li>• Community Services Block Grant (CSBG) Act</li> <li>• Rehabilitation Act</li> <li>• Workforce Investment Act (WIA)</li> </ul>
FY 2002	<ul style="list-style-type: none"> <li>• Child Care and Development Block Grant (CCDBG) Act</li> </ul>
FY 1996	<ul style="list-style-type: none"> <li>• National Environmental Education Act (NEEA)</li> </ul>
FY 1993	<ul style="list-style-type: none"> <li>• National Foundation on the Arts and Humanities Act</li> </ul>

From a big picture perspective, here is a quick lay of the land during the next two years of Congress

- Every major education program is up for reauthorization;
- The outlook for education funding is completely up in the air pending any possible decisions in the upcoming lame duck session of Congress; and
- The Obama Administration will likely continue its efforts to implement its agenda through administrative and regulatory actions (with some regulations potentially ready to go right after the election).

Legislation – Here is our review of budget and appropriations issues that must be addressed before the end of this year as well as key education and job training legislation that will likely be considered during the 113<sup>th</sup> Congress:

- Budget and Appropriations – In the near term, Congress must address the following issues:
  - Appropriations – Congress recently passed a 6-month “continuing resolution” (CR) that will fund the federal government through March 27, 2013. This action became necessary since none of the FY 2013 Appropriations bills have cleared the Senate at this point. The CR package is funded at the level agreed to for FY 2013 in the Budget Control Act. This level was set at \$1.047 trillion for FY 2013, \$4 billion over the FY 2012 enacted level of \$1.043 trillion. Among the provisions of the version of the CR that passed the House that impact education are:
    - A 0.6% increase (6/10ths of a percent) above the FY 2012 levels of funding for nearly every discretionary program – including Department of

Education programs. But note that this increase will have no real impact on programs during the period of the CR.

- An extension of the provision included in a CR at the end of 2010 that permitted teachers who were participating in alternative certification programs to be considered highly qualified teachers under ESEA. This provision would be extended through the end of the 2013-2014 school year. In addition, new reporting requirements were added that require the Department of Education to submit a report on the extent to which students with disabilities, English Language learners, and students in rural areas and from low-income families in each state and local educational agency are being taught by such teachers.

**Note:** While education nearly always does better than other domestic programs in the budget process, the very real possibility of program eliminations and funding cuts looms if an overall budget agreement between Congress and the President is reached that touches on all programs in an indiscriminate manner. Clearly, the era of hundreds of billions of dollars of additional education spending is over. While at the end of the day we do not foresee huge cuts in education funding in the next Congress, we certainly do not see big increases either. We believe there will be an ongoing re-prioritization of funding for education programs, with smaller more targeted programs as well as new initiatives taking a back seat to programs that traditionally have much broader support such as IDEA, Title I and Pell Grants.

- Sequestration – Since the super committee failed to strike a deal on deficit reduction, the Budget Control Act passed in August 2011 calls for automatic spending cuts (sequestration) starting on January 2, 2013 that will reduce the deficit by \$1.2 trillion over nine years (generally, those cuts would be divided evenly between defense and nondefense spending). There will likely be an effort among Republicans and Democrats in Congress to diminish the impact of sequestration before the end of the year. If that fails, there is a chance that Congress will choose to delay sequestration by a number of months to provide some additional time to seek a solution to the cuts.
  - On July 20, Secretary Duncan sent a letter to the Chief State School Officers that said sequestration would not be felt until the 2013-2014 school year.
  - On July 25, Sen. Harkin (D-IA) released a report “Under Threat: Sequestration’s Impact on Nondefense Jobs and Services” that outlined the impact of cuts to various nondefense programs.
  - The Administration recently released the report required by the Sequestration Transparency Act of 2012 that provides further information on the impact of budget sequestration. The report projects that there will be an 8.2% cut to non-defense discretionary programs, and a 7.6% cut to non-defense mandatory programs. For the most part, these cuts would be made across the board to education programs, with the exception of Pell Grants which are exempt from sequestration cuts in FY 2013.

- Tax Cuts – The “Bush era” tax cuts expire in 2012. In general, Republicans want to extend all of the Bush era tax cuts. President Obama wants to extend the tax cuts for all brackets except for individuals who make \$200,000 and above, and families that make \$250,000 and above per year. In addition, Congress will likely seek to fix the alternative minimum tax (AMT) for an additional year.
- Other Expirations – The payroll tax rate holiday, federal unemployment benefits, and reimbursement rates for physicians who accept Medicare (Doc Fix) expire in 2012. It is likely that some combination of these issues will be debated before the end of the year.
- Debt Limit – It is possible that the government will reach its debt limit before the end of 2012. If the debt limit is reached, Congress will likely work to reach agreement on another debt limit expansion (that will also include reductions in spending).
- Reauthorization Legislation – With the significant backlog of scheduled reauthorizations, it will be difficult, if not impossible, to tackle most of these issues in the 113<sup>th</sup> Congress. Instead, Congress will have to prioritize these reauthorizations. From what we can tell at this point, the likely schedule to be pursued by the House Education and the Workforce Committee will begin with reintroducing and passing (at least out of Committee) the ESEA and WIA bills from last Congress. Getting either of these bills to the Floor will continue to be a struggle and could easily take up much of the year; this would most likely be followed by an attempt to reauthorize the Higher Education Act (HEA). It should be noted, however, Congress will be forced to deal one way or another next year with the Pell Grant program shortfall and the subsidized student loan rate increase scheduled for July 1, regardless of whether or not there is a HEA reauthorization. We believe that the Perkins Career and Technical Education Act, the Education Research and Sciences Reform Act, and the reauthorization of the Child Care and Development Block Grant (primarily in the Senate) may also find their way on to the agenda if any of the aforementioned reauthorizations stall.
  - **Elementary and Secondary Education Act** – The Senate HELP Committee reported a comprehensive bill to reauthorize ESEA (S. 3578) on October 20, 2011 by a bipartisan vote of 15-7. Supporters of the bill included Chairman Harkin (D-IA), Ranking Member Enzi (R-WY), Sen. Alexander (R-TN), Sen. Kirk (R-IL), and all of the Committee Democrats. Technically, the bill is currently awaiting floor consideration; though it is not likely to be scheduled for a vote this year.

The House Committee on Education and the Workforce has chosen to follow a more piecemeal strategy, breaking reauthorization of ESEA into five separate bills and moving them individually through the Committee and on to the floor. These bills include:

1. A bill focused on charter schools which passed the full House by an overwhelmingly bipartisan margin;
2. A bill which would eliminate many of the individual small programs currently authorized under ESEA (reported by the House Committee on

Education and the Workforce on a partisan basis and awaiting floor action);

3. A bill focused on increased transferability and flexibility (reported by the House Committee on Education and the Workforce on a partisan basis and awaiting floor action);
4. The Student Success Act (essentially the Title I program and its accountability provisions; reported by the House Committee on Education and the Workforce on a partisan basis and awaiting floor action); and
5. The Encouraging Innovation and Effective Teacher Act (the remaining ESEA programs, most notably teacher professional development/evaluation and a large locally-driven block grant that consolidates most of the remaining programs; reported by the House Committee on Education and the Workforce on a partisan basis and awaiting floor action).

At this point it is highly unlikely that either the House or Senate will be able to produce a comprehensive reauthorization bill that will be able to be signed into law by the President this year. Going forward, the Administration will need to push in a significant way to ensure a successful and comprehensive reauthorization of ESEA.

The inability of Congress and the Administration to come together on reauthorization of ESEA ultimately led the Secretary to pursue a different course, a state-by-state waiver process that became a de facto mini-ESEA reauthorization in each of the 35 states that have thus far been given flexibility to implement Administration priorities in lieu of NCLB law.

These waivers have dramatically changed federal K-12 policy in immeasurable and often undecipherable ways. Furthermore, the waivers have the potential to negate the need (and on the part of the Administration, the desire) to work with Congress to reauthorize ESEA. They have also changed the nature of the federal role in education from a fairly unified structure that used a common set of rules for all states to one in which each state “cuts its own deal” in an extended negotiation with federal officials on many key education issues.

To date, 35 states (including the District of Columbia) have been granted waivers:

Arizona	Georgia	Massachusetts	New Mexico	South Carolina
Arkansas	Idaho	Michigan	New York	South Dakota
Colorado	Indiana	Minnesota	North Carolina	Tennessee
Connecticut	Kansas	Mississippi	Ohio	Utah
Delaware	Kentucky	Missouri	Oklahoma	Virginia
District of Columbia	Louisiana	Nevada	Oregon	Washington
Florida	Maryland	New Jersey	Rhode Island	Wisconsin

- **Workforce Investment Act (WIA)** – WIA is the largest single source of federal funding – nearly \$5 billion in FY12 – for workforce development activities. WIA created a universal access system of one-stop career centers for the delivery of training and employment services for a range of workers, including low-income adults, low-income youth, and dislocated workers. The Workforce Investment Act (WIA), which also includes the Department of Education’s Adult Education program, has been scheduled for reauthorization since 2003.

Discussion – Republicans and Democrats have both tried and failed to reauthorize the Workforce Investment Act (WIA) for several years. In our view, the reason for this is that while there appears to be a wide consensus that the WIA system needs an overhaul, there are simply not that many ideas on how best to reform the system as it currently exists.

Outlook – We may finally be at a point where all sides agree that something must be done. This is a less politically charged issue than either HEA or ESEA, so Republicans and Democrats may be able to come together on a WIA reauthorization.

- **Higher Education Act** – The Higher Education Act authorizes the vast majority of the federal aid programs that go directly to students attending qualified postsecondary education institutions. Funding for the Higher Education Act amounts to more than \$165 billion per year, which is largely spent on well-known programs such as subsidized and non-subsidized federal direct student loans, Parent’s Loans, the Pell Grant program, Teacher Education programs, Work Study, TRIO, Gear-Up, and much more. The Higher Education Act also stipulates how higher education institutions can become eligible to receive financial aid and describes what institutions must do to maintain aid.

The Higher Education Opportunity Act (Public Law 110-315) of 2008 is the most recent reauthorization of the Higher Education Act of 1965. The Higher Education Act is scheduled to be reauthorized next Congress. The only legislative activity from Congress this past year was preventing the 3.4% student loan interest rate from doubling to 6.8% in July. However, the administration promulgated several regulations over the past year that have had a significant impact on higher education, including gainful employment, state authorization and clock/credit hour regulations, among others that are tied up in court battles at the moment. There are two higher education issues that will force Congress to address higher education funding issues next year—with or without a reauthorization. The first is the scheduled doubling of the student loan interest rate from 3.4% to 6.8% on July 1, 2013. Second, the Pell Grant program appears to be facing a shortfall of approximately \$6 billion that will need to be addressed in the FY14 appropriations process.

Discussion – For many years, higher education has been the one issue in education that never seems to take a break. Whether it is a reauthorization, reconciliation, appropriations bill, or Department of Education regulations, there always seems to be something significant occurring on the federal level that will have a dramatic impact on colleges and universities around the nation. Next Congress is not likely to be any different.

At this point, there are several issues that could drive consideration of a higher education bill – including the intensive focus on for-profit higher education by Senate Democrats and the Administration, funding and eligibility questions for the Pell Grant and student loan programs, the continued focus on increasing accountability, and the Administration’s expanded emphasis on college completion.

Outlook – We believe that the odds are better than 50-50 that Congress and the President will agree to pass legislation that will prevent the federal student loan interest rate from doubling and address the Pell Grant shortfall. This may occur as a single bill(s), as part of a budget agreement, or a bill dealing with other issues. A bill to address either or both of these issues must be offset according to congressional budget scoring rules, and it is possible that other higher education programs (such as the interest subsidy for federal subsidized student loans) will be cut to pay for these changes.

We do not believe a full higher education reauthorization will be signed into law next year, though there may be a chance for this to occur by the end of the 113<sup>th</sup> Congress.

- **Child Care and Development Block Grant (CCDBG)** – CCDBG provides subsidies to assist low-income families in obtaining child care so that parents can work or participate in education or training activities. Discretionary funding for this program is authorized by the Child Care and Development Block Grant Act of 1990, which is long overdue for reauthorization (it hasn’t been reauthorized since 1996). In addition, mandatory funding for child care is provided through the Child Care Entitlement to states program (which was extended through FY 2012 as part of P.L. 112-78, the Temporary Payroll Tax Cut Continuation Act of 2011). In combination, these two funding streams are commonly referred to as the Child Care and Development Fund (CCDF).

CCDF discretionary and mandatory funding is administered by the Department of Health and Human Services (HHS), and provides block grants to states according to a formula, which are used to subsidize the child care expenses of working families with children under age 13. CCDF provides states with significant flexibility to design and implement their child care programs and also supports activities intended to improve the overall quality and supply of child care for families in general.

Discussion – For FY 2013, President Obama’s budget request for CCDF is \$6.0 billion, including \$2.6 billion for CCDBG and \$3.4 billion for the mandatory Child Care Entitlement to States program. The President’s FY 2013 budget request would help states avert more cutbacks and maintain services to families, as well as continue investments in quality such as scholarships for teachers and grants to providers that were made possible with ARRA funding. The FY 2013 child care funding request would extend child care assistance in FY 2013 to an estimated 70,000 more children than could be served in the absence of these additional funds. The request also maintains \$9.9 million in discretionary funds to support continuing research, demonstration, and evaluation activities.

To expand access to high-quality child care, the budget request supports a reauthorization package that devotes a larger share of CCDF to raising the bar on quality and puts more information into the hands of parents so that they can make informed choices about the care and education of their children. The Administration's principles for reauthorization include:

- Improving the quality of early childhood development and afterschool settings to better prepare children for success in school.
- Serving more low-income children in safe, healthy, nurturing child care settings that are highly effective in promoting learning, child development, and school readiness.
- Supporting parent employment and parent choice by expanding high quality choices available to parents across a range of child care settings and providing parents with information about the quality of child care programs.
- Minimizing disruptions to children's development and learning by promoting continuity of care.
- Strengthening program integrity and accountability in the CCDF program.
- Encouraging states to assess and track children's school readiness.
- Streamlining federal, state, and local early care and education programs to support early learning and school readiness.

In the Senate, HELP Subcommittee on Children and Families Chairwoman Barbara Mikulski (D-MD) and Ranking Member Richard Burr (R-NC) have been working in a bipartisan manner to reauthorize CCDBG. To date, no legislation has been introduced, but staff has begun to discuss a draft reauthorization bill that would focus on many of the quality issues in President Obama's budget request as well as new provisions that would require comprehensive background checks for all child care providers.

Outlook – While the authorization for CCDBG expired in FY 2002, there has not been a significant effort to update the law since welfare reform was enacted under the Clinton Administration. On the Senate side, bipartisan discussions have progressed between Senators Mikulski (D-MD) and Burr (R-NC) over the past several months with the hopes of releasing a discussion draft or introducing a bill sometime this year. Regardless of whether a bill is released or introduced in the Senate this year, Senate HELP Committee staff have expressed an interest in pursuing reauthorization of CCDBG in the 113<sup>th</sup> Congress. On the House side the path to reauthorization is not progressing as in the Senate (in fact, we are not aware of any serious staff or Member discussions on the House side related to reauthorizing CCDBG).

- **Other Potential Issues** that could be considered in the 113<sup>th</sup> Congress include:

- **Career and Technical Education Reauthorizations (Perkins Act)** – The Perkins Act is the largest source of career and technical education funding for high schools and community colleges. The last reauthorization of the Perkins Act in 2006 aimed to provide an increased focus on the academic achievement of career and technical education students, strengthen the connections between secondary and postsecondary education, and improve state and local accountability. The program has been flat funded over the last few years.

Discussion – Earlier this year, the Administration released its blueprint for reauthorization, titled, *Investing in America's Future: A Blueprint for Transforming Career and Technical Education*. At present, this is the only substantive Perkins reauthorization proposal, which is driving most of the conversation around updating the statute.

Outlook – As reauthorizations of this law are generally not controversial, it is possible the next Congress is able to move a Perkins bill.

- **Individuals with Disabilities Education Act (IDEA)** – IDEA is the Federal law which provides funding to states in exchange for these states ensuring that children with disabilities receive a free appropriate public education along with due process protections for such children. Funding for the program enjoys wide bipartisan support. The last reauthorization of IDEA was in 2004.

Discussion – There has been little focus by the Administration on reauthorization of IDEA at this point. Instead, the Administration has been working within the Department to reexamine the focus of the system used to monitor states for IDEA compliance. As part of this effort, the Administration has focused on structuring a monitoring system that looks more at outcomes for students with disabilities rather than strict compliance with IDEA's administrative requirements. A focus on the policy aspects of IDEA is likely forthcoming from the Administration in 2013.

Outlook – The current IDEA statute has not generated the same amount of policy concerns as in past years prior to other reauthorization efforts. However, with the other major reauthorizations that have not been completed, IDEA is not likely to be addressed before ESEA, HEA or WIA.

- **Education Sciences Reform Act (ESRA)** – ESRA is the largest federal investment in education research, and includes IES, NCES, the Regional Educational Laboratories, and the Comprehensive Centers. There has been recent interest in evidence-based programming after a May 2012 OMB memo on this topic, and ESRA could play an important role in driving that agenda. In addition, on the Hill, ESRA is much less controversial than other pending education legislation. If other major education bills are stalled, ESRA is something that could move fairly quickly on a bipartisan basis through either the House or the Senate. The issue of education research broadly has been raised in hearings and committee markups on both sides of the aisle as an important investment for the federal government, giving a strong hope for bipartisanship when it moves.