AGENDA

- Congress
  - Schedule for 2020
  - Appropriations
  - Oversight
  - Substantive policy legislation

- The Administration
  - Administrative organization
  - Regulatory agenda
  - New policy shifts

- The Courts
  - What we’re following in 2020
## CONGRESSIONAL CALENDAR

<table>
<thead>
<tr>
<th>Month</th>
<th>In session</th>
<th>In Recess</th>
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<tr>
<td>December</td>
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CONGRESSIONAL CALENDAR

August

October
CONGRESSIONAL CALENDAR

Illustration: James Yang for the Wall Street Journal

November/December
BOTTOM LINE

- Little time to focus on substantive policy legislation
- Focus is instead on:
  - Self-preservation (campaigning)
  - “must-pass” legislation (i.e. appropriations, etc.)
  - Emerging urgent issues
APPROPRIATIONS

- Fiscal Year 2020
  - Finalized funding in December 2019
  - Overall, modest increases to most education programs
  - Some policy riders
    - Increase purchase age for tobacco
    - Preserve ED budget office
    - Allows States to subgrant IDEA Sections 611 and 619 funds to local educational agencies, institutions of higher education, other public agencies, and private non-profit organizations in order to carry out the activities authorized in those sections
<table>
<thead>
<tr>
<th>Program</th>
<th>Final FY 2019</th>
<th>Final FY 2020</th>
<th>Change from 2019</th>
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<td>ESEA Title I Grants</td>
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<td>Charter School Grants</td>
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<td>Student Support and Academic Enrichment (Title IV-A)</td>
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<td>IDEA Part B State Grants</td>
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<td>CTE State grants</td>
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<td>Adult Education State grants</td>
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<td>TRIO</td>
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<td>$1,090,000</td>
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<td>Head Start, including Early Head Start</td>
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<td>$10,613,000</td>
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<td>CCDBG</td>
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<td>Preschool Development Grants</td>
<td>$250,000</td>
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LOOKING AHEAD TO 2021

- Congress passed budget deal ahead of summer 2019 recess
  - Raises budget caps for FYs 2020 and 2021
  - 4% increase for non-defense programs for FY 2020
  - Suspends debt ceiling until July 2021
  - Allows Budget Control Act to expire in 2021 = No future threat of sequestration!
    - Consequences for budget deals made under BCA will persist
LOOKING AHEAD TO 2021

- No need to hammer out new budget deal will make process move more quickly
- But may not pass appropriations bill before election
- If Congress has not made substantial progress on appropriations before end of September, expect long-term continuing resolution
  - Possibly through lame-duck session
OVERSIGHT

- Types of oversight
  - Policy and implementation
    - Usually Committee-specific
    - Focus is on cabinet officials and high-ranking staff
    - E.g. Education and Labor Committee hearing on PSLF
  - Conduct and personnel
    - All starts in committee but can become chamber-wide
    - Can focus on one agency or White House
    - E.g. conflict of interest concerns with ED higher education officials, appointment of acting inspector general
    - Most extreme expression: impeachment
IMPEACHMENT

- Procedure set by Constitution
- Articles referred from House to Senate for trial
- Senate sets procedures for trial, led by Supreme Court Chief Justice
  - Depending on procedures, can be more or less time consuming
- Regardless of procedures, results, this will take up much of the air in the room in early spring!
SUBSTANTIVE POLICY LEGISLATION

- Need to find bipartisan bills that can be squeezed into time available
  - No controversial bills
  - No long bills
  - Nothing that costs money?

- Potential candidates:
  - Higher education?
    - Congress passed bipartisan FAFSA simplification and HBCU funding in December
  - No more areas of compromise?
  - Child nutrition
SUBSTANTIVE POLICY LEGISLATION

- Child Nutrition
  - Senate: Committee on Agriculture; House: Committee on Education and Labor
  - Agreement on principles of reauthorization
    - Small-scale, minor changes
    - Updating requirements, codifying some current waivers
    - Improving program integrity
      - Expand CEP?
      - Improve Direct Certification?
    - Address unpaid school meal debt
      - Prohibit “shaming” practices
      - Require outreach?
MORE REAUTHORIZATIONS?

- Individuals with Disabilities Education Act (IDEA)
- Elementary and Secondary Education Act (ESEA)
ADMINISTRATIVE ORGANIZATION (AND REORGANIZATION)

- Administration-wide:
  - Discourage telework
  - Moving agencies?

- Department of Education-specific
  - Closed on-site cafeteria
  - Ended telework
In first two years of administration, ED lost more than 550 staff and reduced overall size by 14 percent

<table>
<thead>
<tr>
<th></th>
<th>January 2017</th>
<th>January 2019</th>
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<tr>
<td>Political Appointees</td>
<td>15</td>
<td>9</td>
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<tr>
<td>Career Staff</td>
<td>294</td>
<td>258</td>
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SMALLER AGENCIES, BUT EVERYWHERE

- Effort to move USDA sub-offices out of DC area
  - USDA decided to move Economic Research Service (ERS) and National Institute of Food and Agriculture (NIFA) to Kansas City
    - Gave employees deadline, offered relocation or buyout
      - NIFA: out of 224 eligible employees, 70 accepted move, 28 have “delayed orders”
      - ERS: out of 181, 16 reassigned, 24 on temporary contracts
    - Delayed relocation date to help finish work while hiring conducted in KC
    - Staffing levels dropped by 75%+
    - 40 reports delayed
    - Grantees told to expect funding delays of 60+ days
    - USDA reportedly bringing back retirees, former employees on temporary contracts
SMALLER AGENCIES, BUT EVERYWHERE?

- “Helping Infrastructure Restore the Economy Act” (S. 2672)
  - Senators Josh Hawley (R-MO), Marsha Blackburn (R-TN)
  - Would move 90% of the positions in 10 Cabinet-level departments out of D.C.
    - Including agency headquarters
  - Exempts
    - Presidential staff/offices
    - Smithsonian
    - FBI/CIA and other National Security Infrastructure
  - Explicitly prohibits challenges in
    - Federal circuit courts
    - U.S. Supreme Court
SMALLER AGENCIES EVERYWHERE?

- Department of Agriculture → Missouri
SMALLER AGENCIES EVERYWHERE?

- Department of the Interior → New Mexico
SMALLER AGENCIES EVERYWHERE?

- Department of Transportation → Michigan
SMALLER AGENCIES EVERYWHERE?

- Department of Labor → West Virginia
- Department of Commerce → Pennsylvania
SMALLER AGENCIES EVERYWHERE?

- Department of Veterans Affairs ➔ South Carolina
SMALLER AGENCIES EVERYWHERE?

- Department of Energy → Kentucky
SMALLER AGENCIES EVERYWHERE?

- Department of Education ➔ Tennessee
SMALLER AGENCIES EVERYWHERE?

- Department of Health and Human Services → Indiana
- Department of Housing and Urban Development → Ohio
CONGRESSIONAL INTERVENTION

- **Fiscal Year (FY) 2020 Omnibus appropriations bill:**
  - Prohibits the reorganization or elimination of the budget office within the U.S. Department of Education
  - No OPM elimination
    - Administration requested $50m to carry out the OPM merger with the General Services Administration.
  - No funding for Bureau of Land Management relocation
    - Planned relocation to Grand Junction, Colorado, and other western states
    - Congress directed the bureau to begin monthly briefings on the BLM relocation with appropriations committees instead
CONGRESSIONAL INTERVENTION

- Fiscal Year (FY) 2020 Omnibus Report language
  - OPM urged to “fill critical vacancies such as informational technology and human resources positions.”
  - Social Security Administration (SSA) “urged to develop a telework plan for operations employees as quickly as practicable and to brief the committees on the status of efforts to reinstate telework within 60 days of enactment”
  - On BLM: “The department has not fulfilled its obligation to fully communicate the organizational and financial details of the reorganization and relocation of the bureau’s Washington, D.C., headquarters. It has not provided bureau employees, Congress, agency stakeholders or the general public with adequate information regarding this move. Furthermore, it has not explained how it will sustain its operations and remain an effective land management agency following the anticipated loss of much of its senior management and the expected significant attrition of its workforce caused by the reorganization.”
THE REGULATORY AGENDA

- In the past year...
  - Higher Education
    - Title IX Sexual Harassment and Assault regulations (1/20)
    - Borrower defense (new metric)
  - SNAP
    - Reducing eligibility, limiting period of availability for benefits → impact on direct certification
THE REGULATORY AGENDA

- Congressional pushback
  - House using Congressional Review Act to criticize borrower defense regulations
  - May act to prohibit enforcement of Title IX regulations, depending on content
  - Investigations likely into regulatory process/ potential conflicts of interest
THE REGULATORY AGENDA

- Coming up:
  - K-12
    - New significant disproportionality regulations
      - Would replace current regulations
      - Originally proposed in 2016, delayed 2 years in 2018, delay invalidated by lawsuit
    - Final Migrant regulations (reinterviewing)
    - No further ESEA regulations – focus on guidance?
  - Child nutrition
    - More on SNAP
    - NSLP/SBP “regulatory flexibilities”
    - Program integrity
THE REGULATORY AGENDA

- ESSA Study by ED
  - Comprehensive review and analysis by IES of ESEA Title I-A, Title II-A, Title III-A, Title IV-A, IDEA Part B
  - IES will:
    - Collect a variety of financial information from a “nationally representative sample” of 400 school districts
      - Including budgets and expenditures and personnel and payroll data
    - Survey districts and school officials to examine issues such as the types of services and resources that are provided, coordination across programs, and use of flexibility by the districts and schools
    - Conduct nine site visits
THE REGULATORY AGENDA

- ESSA Study by ED
  - Main questions:
    - How are federal funds being used?
    - Are States/ districts using existing flexibilities?
  - Preliminary surveys in May, data collection starting in September
- Smaller GAO study
  - Primary differences:
    - Size/scale
    - Purpose/ end use
    - Enforcement authority
THE REGULATORY AGENDA

- Overall:
  - Reduce federal role/prescriptiveness
  - Set in regulations existing temporary (waiver) flexibilities
  - Competitive priorities to boost administration’s policy preferences
  - Focus on guidance (or “non regulatory informational documents”) instead of regulations
CUTTING REGULATIONS: CONGRESSIONAL PUSHBACK?

- **HEA House proposal:**
  - New CFPB “office of borrower advocate”
  - New enforcement office within FSA
  - Requires data collection and reporting on Title VI of Civil Rights Act

- **Perkins bill (2018)**
  - Adds to “special populations” where services targeted/ success tracked
  - Additional data disaggregation
NEW POLICY SHIFTS WITHIN ED

- Case Processing Manual (CPM) changes in 2018
- Changes in perspective on Title IX
  - New investigations
    - CT athletics
    - Women-only STEM programs
  - Whose rights does Title IX protect?
- Rep. Bonamici letter to OCR
  - “recent studies have shown that vigorous enforcement of students’ rights is not occurring”
  - OCR 9 times less likely to take action on complaints of discrimination based on sexual orientation and gender identity than under the previous administration
  - No annual reports since 2016
NEW POLICY SHIFTS WITHIN ED

- CRDC proposed changes
  - Stop collecting data on preschool discipline, teachers, enrollment by race
  - Start collecting data on religiously-based harassment and bullying
- Seclusion and restraint
  - Technical assistance regarding inputting data (January webinar)
  - Updating systems to accommodate “no data” versus “0” options
NEW POLICY SHIFTS WITHIN ED

- Lawsuits (and other disagreements) regarding who can enforce laws
  - Federal Register, March 2018: "Recently, several states have enacted regulatory regimes or applied existing state consumer protection statutes that undermine these goals... "[t]he Secretary emphasizes that the Department continues to oversee loan servicers to ensure that borrowers receive exemplary customer service and are protected from substandard practices."

- State attempts at enforcement are preemption? (or an “illegal veto” of federal authority?)

- Spokesperson, September 2018: “Federal loans are federal assets and therefore must be controlled and regulated by the federal government”
OTHER NOTABLE SHIFTS WITHIN ED

- Elevating status of private schools, charters
- Promoting “Education Freedom Scholarships”
- Elevated Office of Nonpublic Education to Office of the Secretary
- Final equitable services guidance weighted heavily in favor of private schools
  - E.g. in outreach, carryover
OTHER NOTABLE SHIFTS WITHIN ED

- Administration filed *amicus curiae* briefs in private school funding cases on “Blaine amendments”
  - Montana Dept. of Revenue v. Espinosa (SCOTUS)
- “The State thus ‘imposes a penalty on the free exercise of religion’: it forces students who are otherwise eligible for the tuition program to choose between “participat[ing] in [the] program or remain[ing] [enrolled at] a religious institution.” (DOJ Brief in Maine case)
- Seeking expansion of *Trinity Lutheran* holding
Which clause of the first amendment takes precedence?

“Congress shall make no law respecting an establishment of religion…”

“…or prohibiting the free exercise thereof.”
CASES AND QUESTIONS TO WATCH

- Montana v. Espinoza
  - Oral arguments starting 1/22
- Accommodations for transgender students
  - Gavin Grimm case for fall 2020 term?
- Potential challenges to regulatory shifts
QUESTIONS?
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