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# **ESEA Reauthorization Proposals in the 114<sup>th</sup> Congress: Selected Key Issues**

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## Summary

The Elementary and Secondary Education Act (ESEA) was last comprehensively amended by the No Child Left Behind Act of 2001 (NCLB; P.L. 107-110). During the 114<sup>th</sup> Congress, the House Education and the Workforce Committee reported the Student Success Act (H.R. 5), which would provide for a comprehensive reauthorization of the ESEA. The bill was subsequently passed on the House floor on July 8, 2015. The Senate Health, Education, Labor, and Pensions (HELP) Committee reported the Every Child Achieves Act of 2015 (ECAA; S. 1177), which would also provide for a comprehensive reauthorization of the ESEA. S. 1177 was subsequently passed on the Senate floor on July 16, 2015.

H.R. 5 and S. 1177 would make several changes to the ESEA, most notably in six key areas that have garnered substantial congressional interest.

1. **Accountability for student achievement:** Both bills would modify current ESEA accountability requirements related to student achievement, by eliminating the requirement to determine adequate yearly progress (AYP) and the requirement to apply a specified set of outcome accountability provisions to failing schools and local educational agencies (LEAs). Both bills would continue to require that states have standards and assessments for reading, mathematics, and science. H.R. 5 and S. 1177 would require that state assessments measure student academic achievement, but measuring student growth would be optional. Both bills would continue to require that the results of reading and mathematics assessments be included in a state's accountability system. Under S. 1177, states would be required to annually establish state-designed goals for all students and subgroups of students related to student achievement and high school graduation rates. Both bills would require states to identify the lowest performing schools but neither bill would require that a certain number or percentage of schools be identified as low performing.
2. **Distribution of Title I-A grants.** The ESEA Title I-A grant program, which provides supplementary educational and related services to low-achieving and other students attending pre-kindergarten through grade 12 schools with relatively high concentrations of students from low-income families, is the largest formula grant program in the ESEA. H.R. 5 would establish a new option for distributing Title I-A funds to LEAs and schools (commonly referred to as portability or the state option). S. 1177 would not include a Title I-A portability option, but it would alter the criteria used to determine the rank order in which public schools receive Title I-A funds and create a fifth formula that would be used to determine grants to LEAs.
3. **Fiscal accountability.** H.R. 5 and S. 1177 would alter existing fiscal accountability requirements. H.R. 5 would eliminate maintenance of effort (MOE) requirements. S. 1177 would retain the MOE requirements with changes. S. 1177 would also alter the supplement, not supplant requirements that apply to Title I-A funds.
4. **Educator quality, equity, and effectiveness:** Both H.R. 5 and S. 1177 would eliminate the current "highly qualified" teacher requirement. H.R. 5 would also eliminate a provision to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field

- teachers. S. 1177 would retain this provision and replace the term “unqualified” with “ineffective.” Both bills would allow certain federal funds to be used for the development and implementation of teacher and school leader evaluation systems. Such systems could include the use of student achievement data to measure teacher and leader effectiveness.
5. **Grants to states and LEAs to support teachers and leaders:** Both H.R. 5 and S. 1177 would amend the current Title II-A formula grant program that provides funds to support the improvement of school teachers and principals. In addition to changes in the activities supported, both bills would change current formula factors that determine how funds are allocated to states and LEAs. S. 1177 would also reauthorize the current Teacher Incentive Fund (TIF), which provides support for performance-based compensation systems. H.R. 5 would allow for TIF activities to continue under a new program.
  6. **Targeted support versus block grants:** H.R. 5 would not retain numerous existing programs and would greatly expand the use of block grant funding. S. 1177 would retain funding for most currently funded formula grant programs but would not reauthorize several other programs. It would also create a new block grant program.

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## Introduction

The Elementary and Secondary Education Act (ESEA) was last comprehensively amended by the No Child Left Behind Act of 2001 (NCLB; P.L. 107-110). Appropriations for most programs authorized by the ESEA were authorized through FY2007.<sup>1</sup> As Congress has not reauthorized the ESEA, appropriations for ESEA programs are currently not explicitly authorized. However, because the programs continue to receive annual appropriations, appropriations are considered implicitly authorized.

During the 114<sup>th</sup> Congress, the House Education and the Workforce Committee reported the Student Success Act (H.R. 5), which would provide for a comprehensive reauthorization of the ESEA. The bill was subsequently passed on the House floor on July 8, 2015, based on a strictly partisan vote of 218-213.<sup>2</sup> The Senate Health, Education, Labor, and Pensions (HELP) Committee reported the Every Child Achieves Act of 2015 (ECAA; S. 1177), which would also provide for a comprehensive reauthorization of the ESEA. S. 1177 was subsequently passed on the Senate floor on July 16, 2015, based on a bipartisan vote of 81-17.<sup>3</sup>

H.R. 5 and S. 1177 would make several changes to current law, most notably in six key areas that have garnered extensive congressional interest: (1) accountability for student achievement; (2) distribution of Title I-A grants to states, local educational agencies (LEAs), and schools; (3) fiscal accountability; (4) educator quality, equity, and effectiveness; (5) grants to states and LEAs to support teachers and leaders; and (6) targeted support for elementary and secondary education programs versus the use of a block grant. In addition, both bills would eliminate some existing programs, while creating new programs.

This report examines major features of H.R. 5 and S. 1177 compared with current law. The report begins by discussing the approach that each bill takes toward reshaping the ESEA in key areas. Next, the report considers the ESEA by title and part to examine how the ESEA would be reconfigured under each bill. This is followed by an examination of proposed program authorizations included in H.R. 5 and S. 1177. The last section of the report provides an overview of the changes each bill would make to existing laws and programs and new programs and provisions that would be enacted outside of the ESEA. The report does not aim to provide a comprehensive summary of the bills or of technical changes that would be made by either bill.

For the purposes of this report, a program is considered to be a new program if the program is a newly proposed program or is a substantively changed or reconfigured existing program (e.g., multiple aspects of a program are changed, such as the purpose of the program, distribution of funds, uses of funds, or eligible recipients of funds). Programs included in H.R. 5 and S. 1177 are

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<sup>1</sup> The General Education Provisions Act (GEPA) provided a one-year extension of ESEA program authorizations. GEPA provides that, “The authorization of appropriations for, or duration of, an applicable program shall be automatically extended for one additional fiscal year unless Congress, in the regular session that ends prior to the beginning of the terminal fiscal year of such authorization or duration, has passed legislation that becomes law and extends or repeals the authorization of such program” (20 U.S.C. 1226a). As Congress did not pass legislation to reauthorize the ESEA by the end of the 2005 calendar year, the program authorizations were automatically extended through FY2008. While appropriations for ESEA programs are no longer authorized, they continue to receive annual appropriations. This is considered an implicit authorization of appropriations for the programs.

<sup>2</sup> For more information, see House Roll no. 423.

<sup>3</sup> For more information, see Senate Record Vote Number 249.

considered to be similar to programs in current law if they are substantively similar in purpose, recipients, and activities. The tables in this report refer to these programs as being “retained” by the bill. For example, the Title II-A program is considered to be retained in H.R. 5 and S. 1177, despite proposed changes in each bill to the formula used to allocate funds to states and in the uses of funds. On the other hand, the block grant programs created under H.R. 5 and S. 1177 are considered new programs, as they both differ from the current Innovative Programs block grant program in numerous ways including program purposes, funding to subgrantees, and allowable activities. Concurrently, the block grant program under current law is considered to be “not retained” under H.R. 5 or S. 1177.

## **ESEA Flexibility Provided by the Administration**

While Congress has not enacted legislation to reauthorize the ESEA, on September 23, 2011, President Obama and the Secretary of Education (hereinafter referred to as the Secretary) announced the availability of an ESEA flexibility package for states and described the principles that states must meet to obtain the included waivers. The waivers exempt states from various academic accountability requirements, teacher qualification-related requirements, and funding flexibility requirements that were enacted through NCLB. State educational agencies (SEAs) may also apply for optional waivers related to the 21<sup>st</sup> Century Community Learning Centers program and the use of funds, determinations of adequate yearly progress (AYP), and the allocation of Title I-A funds to schools.<sup>4</sup> However, in order to receive the waivers, SEAs must agree to meet four principles established by the U.S. Department of Education (ED) for “improving student academic achievement and increasing the quality of instruction.” The four principles, as stated by ED, are (1) college- and career-ready expectations for all students; (2) state-developed differentiated recognition, accountability, and support; (3) supporting effective instruction and leadership; and (4) reducing duplication and unnecessary burden.

Taken collectively, the waivers and principles included in the ESEA flexibility package amount to a fundamental redesign by the Administration of many of the accountability and teacher-related requirements included in current law. As of July 2015, ED had approved ESEA flexibility package applications for 42 states and the District of Columbia and was reviewing applications from other states.<sup>5</sup> If Congress continues to work on ESEA reauthorization during the 114<sup>th</sup> Congress, it is possible that provisions included in any final bill may be similar to or override the waivers and principles established by the Administration.

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<sup>4</sup> Since the announcement of the ESEA flexibility package, ED has made additional waivers available to states. For example, states may request a waiver to delay the implementation of any personnel consequences for teacher and school leaders that are related to the new state assessments for up to one year. They may also request a waiver to avoid “double-testing” students during the transition from their current assessments to their new assessments aligned with college- and career-ready standards. Related to the testing of students, a state may also request a waiver for schools to retain their accountability designation for an additional year, during which they would continue to implement the same interventions. For more information, see the policy letter sent to the Chief State School Officers by Secretary Duncan on June 18, 2013, available online at <http://www2.ed.gov/policy/elsec/guid/secletter/130618.html>.

<sup>5</sup> ED is currently reviewing applications for Iowa and Wyoming. Washington had an approved ESEA flexibility package but lost its approval in 2014 for failure to meet the second of the four principles established by ED. (See <http://www2.ed.gov/policy/eseaflex/secretary-letters/wad6.html> for more information.) Approved state applications and pending applications are available at <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

The remainder of this report focuses only on current law and does not compare the provisions in H.R. 5 or S. 1177 with the provisions included in the ESEA flexibility package.<sup>6</sup>

## Brief Summary of Reauthorization Approaches in Key Areas

This section of the report examines the reauthorization approaches taken by H.R. 5 and S. 1177 in six key areas: (1) accountability for student achievement; (2) distribution of Title I-A grants to states, LEAs, and schools; (3) fiscal accountability; (4) educator quality, equity, and effectiveness; (5) grants to states and LEAs to support teachers and leaders; and (6) targeted support for elementary and secondary education programs versus the use of a block grant. For each of the six areas, a brief discussion of the treatment of the issue under current law is included, followed by a summary of how H.R. 5 and S. 1177 would address the issues.

### Accountability for Student Achievement

Under NCLB, a series of comprehensive standards-based accountability requirements were enacted. States, LEAs, and schools must comply with these requirements in order to receive Title I-A funds. The key features of these requirements are discussed below. This is followed by a brief discussion of how H.R. 5 and S. 1177 would treat each of these requirements.

- **Standards.** At a minimum, each state must adopt challenging academic content and challenging student academic achievement standards in mathematics and reading/language arts (hereinafter referred to as reading) for each of grades 3-8 and for one grade in grades 10-12. States must also adopt content and achievement standards for science for at least three grade levels (grades 3-5, grades 6-9, and grades 10-12). Student performance standards in these subjects must include at least three performance levels: advanced, proficient, and basic. States may choose to adopt standards for other subject areas.
- **Assessments.** All states must develop and implement annual assessments aligned with content and achievement standards in reading and mathematics for grades 3-8 and for at least one grade in grades 10-12. In addition, each state must develop and administer science assessments aligned with content and achievement standards at least once in grades 3-5, grades 6-9, and grades 10-12.
- **Annual measurable objectives (AMOs).** States must develop AMOs that are established separately for reading and mathematics assessments,<sup>7</sup> are the same for all schools and LEAs, identify a single minimum percentage of students who must meet or exceed the proficient level on the assessments that apply to the “all students group” and each subgroup for which data are disaggregated (see below for a discussion of subgroups), and ensure that all students will meet or exceed

<sup>6</sup> For more information about the ESEA flexibility package, see CRS Report R42328, *Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Jody Feder.

<sup>7</sup> Only mathematics and reading must be included for accountability purposes. A state may choose to include other subjects as well.

the state's proficient level of achievement on the assessments based on a timeline established by the state. The timeline was required to incorporate concrete movement toward meeting an "ultimate goal" of all students reaching a proficient or higher level of achievement by the end of the 2013-2014 school year.

- **Adequate yearly progress (AYP).** AYP is determined based on three components: (1) student academic achievement on the required state reading and mathematics assessments, with a focus on the percentage of students scoring at the proficient level or higher; (2) 95% student participation rates in assessments by all students and for any subgroup for which data are disaggregated for AYP determinations; and (3) performance on another academic indicator, which must be graduation rates for high schools. Schools or LEAs meet AYP standards only if they meet the required threshold levels of performance on all three indicators for the "all students" group and any subgroup for which data are disaggregated. AYP must be determined separately and specifically not only for all students but also for all subgroups for which data must be disaggregated within each school, LEA, and state.
- **Subgroups.** Current law establishes a set of student subgroups for accountability purposes and a set of student subgroups for reporting purposes for which data must be disaggregated assuming minimum group size requirements are met.<sup>8</sup> For accountability purposes, these subgroups include economically disadvantaged students, limited English proficient students, students with disabilities, and students in major racial and ethnic groups as determined by the state. For reporting purposes, the aforementioned subgroups must be included as well as subgroups disaggregated by gender and migrant status.
- **Consequences based on performance.** States are required to identify LEAs, and LEAs are required to identify schools, for program improvement if the LEA or school failed to meet the state AYP standards for two consecutive years. LEAs or schools that fail to meet AYP standards for additional years are required to take a variety of actions.<sup>9</sup> For example, schools that fail to meet AYP for two consecutive years are identified for school improvement and must offer public school choice to students, develop a school improvement plan, and use Title I-A funds for professional development. Failure to make AYP for an additional year results in a school also having to offer supplemental educational services (SES). LEAs are required to reserve 20% of their Title I-A funds for transportation for public school choice and for SES. Schools that fail to make AYP for an additional year continue to do all of the aforementioned activities and enter into corrective action. Under corrective action, they are required to take one of several statutorily specified actions, including replacing school staff, changing the

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<sup>8</sup> Student groups need not be considered in cases where their number is so relatively small that achievement results would not be statistically significant or the identity of individual students might be divulged. The selection of the minimum number ("n") of students in a group for the group to be considered in AYP determinations has been left largely to state discretion. Since the same minimum group size policies are applied to schools and to LEAs overall, groups that are too small to be separately considered for individual schools often meet the minimum group size threshold at the LEA level.

<sup>9</sup> A school or LEA identified for improvement can exit this status by making AYP for two consecutive years. If a school or LEA makes AYP for one year, the school or LEA remains at its current improvement status level. If a school or LEA fails to make AYP the next year, it moves to the next level of consequences.

curriculum, extending the school year or school day, limiting management authority at the school level, working with an outside expert, or restructuring the schools' internal organization. Subsequent failure to make AYP requires a school to plan for and, ultimately, implement restructuring. Restructuring involves the continuation of the aforementioned activities and implementation of an alternative governance structure, such as converting to a charter school. It should be noted that these consequences are applied regardless of the extent to which a school failed to make AYP in a given year but consequences need only be applied to schools receiving Title I-A funds.

- **Limited English proficient (LEP) students.**<sup>10</sup> In addition to the aforementioned requirements, all LEP students must be annually assessed to determine their level of English proficiency with respect to reading, writing, speaking, and listening.
- **Students with disabilities.** Current law requires that students with disabilities be included in the annual state assessments using reasonable adaptations and accommodations. Through regulations, ED has established other options for students with disabilities to participate in state assessments and accountability systems, most notably alternate assessments based on alternate achievement standards (AA-AAS) and alternate assessments based on modified achievement standards (AA-MAS). AA-AAS is intended to be used for students with the most significant cognitive disabilities.<sup>11</sup> While there are no restrictions on the number of students who can participate in AA-AAS, there are restrictions placed on how assessment results are included in a state's accountability system. The number of proficient and advanced scores derived from students participating in AA-AAS cannot exceed 1% of all tested students at the LEA or state level. Students with disabilities who are unlikely to reach grade-level proficiency within the current school year may participate in AA-MAS. Similar to AA-AAS, there are no restrictions on the number of students who may participate in AA-MAS, but the number of proficient and advanced scores derived from students participating in AA-MAS cannot exceed 2% of all tested students at the LEA or state level.<sup>12</sup>

## H.R. 5

Similar to current law, states would be required to adopt content and achievement standards for mathematics, reading, science, and any other subject as determined by the state. Assessments for mathematics and reading would continue to have to be aligned with these standards and would be administered in each of grades 3-8 and once in grades 9-12. Science assessments would have to be aligned with state standards and would continue to be administered at least once in grades 3-5, 6-9, and 10-12. States would have the discretion to administer a single annual summative assessment or multiple assessments throughout the school year that result in a single summative

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<sup>10</sup> Current law uses the term "limited English proficient" students. H.R. 5 and S. 1177 refer to these students as English learners.

<sup>11</sup> For more information about assessments for students with disabilities and ESEA requirements, see CRS Report R42070, *The Education of Students with Disabilities: Alignment Between the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act*, by Rebecca R. Skinner and Kyrie E. Dragoo.

<sup>12</sup> The Secretary has proposed amending current regulations to no longer authorize a state to implement AA-MAS. It is unclear when the Secretary will take final action on the proposal. (For more information on the proposed changes, see <http://www.regulations.gov/#!documentDetail;D=ED-2012-OESE-0018-0001>.) It should be noted that states that have received approval for the ESEA flexibility package are no longer permitted to implement AA-MAS.

score. Assessments would have to provide data on student academic achievement. States would have the option of also using assessments to measure student academic growth. States would also be permitted to use computer adaptive assessments that must measure student academic proficiency and growth against grade level standards and may measure student academic proficiency and growth above and below those standards. In addition, nothing in H.R. 5 would prohibit an LEA from administering its own assessments rather than using the state-designed assessments provided, for example, that the LEA receives state approval to administer the assessments and the assessments produce data comparable among all LEAs in the state.

Each state would be required to develop and implement a single, statewide accountability system to ensure that all public school students graduate from high school prepared for postsecondary education or the workforce without the need for remediation. However, states would no longer be required to establish AMOs or determine AYP. In addition, there would be no “ultimate goal” with associated consequences toward which states, LEAs, and schools must work. The state accountability system would be required to annually evaluate and identify the academic performance of each public school based on (1) student academic achievement against the state standards, which may include measures of growth toward meeting such standards, using the aforementioned required mathematics and reading assessments and other valid and reliable academic indicators related to student achievement as identified by the state; (2) the overall performance and achievement gaps as compared to the performance of all students in the school for each subgroup for which data are disaggregated for accountability purposes; and (3) other measures of school success. The inclusion of high school graduation rates as an indicator of student achievement would be optional. However, high school graduation rates would still have to be publically reported. Similar to current law, only mathematics and reading would be required to be included in the accountability system.

Student subgroups for accountability purposes would be the same as those used under current law. For reporting purposes, two additional subgroups would be added to those included under current law: (1) status as a student with a parent who is an active duty member of the Armed Forces, and (2) status as a student in foster care.

H.R. 5 would require that assessments be administered to not less than 95% of all students and not less than 95% of the members of each subgroup included for accountability purposes.<sup>13</sup> However, the bill would allow any students whose parents chose to opt them out of taking the assessments to be excluded from the calculation when determining whether 95% of students were assessed. Thus, states, LEAs, and schools would not be penalized for failing to meet the participation rate requirement due to parents choosing not to have their children take the assessments required under Title I-A.

The bill would eliminate current outcome accountability requirements. States would not be required to identify a specified percentage or number of schools as low-performing. However, they would be required to establish a system for school improvement for low-performing public schools receiving Title I-A<sup>14</sup> funds that would be implemented by LEAs and be designed to address the weaknesses of such schools. While public school choice and SES would no longer be

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<sup>13</sup> Unlike current law, H.R. 5 appears to only require the 95% participation rate to apply at the state level rather than at the school and LEA levels as well. Therefore, data on participation rates may only be available at the state level.

<sup>14</sup> Under H.R. 5, Title I-A would become the Title I-A-1 program. For the purposes of this discussion, the report continues to refer to the program as the Title I-A program.

required, the bill would create a new reservation of funds for direct services to students under Section 1003A. More specifically, states would be required to reserve 3% of the total amount received by the state under Title I-A to make competitive grants to LEAs to provide public school choice or high-quality academic tutoring. The bill would not retain the School Improvement Grant (SIG) program but would require states to reserve 7% (as opposed to 4% under current law) of their Title I-A funds for school improvement activities provided that doing so does not result in any LEA receiving a lower Title I-A grant than it did in the prior year.

With respect to English learners, each state would be required to establish English language proficiency (ELP) standards that are derived from the four recognized domains of reading, writing, speaking, and listening. The ELP standards would have to be aligned with the state's academic content standards in reading.<sup>15</sup> English learners would continue to be assessed annually to determine their levels of English proficiency in reading, writing, speaking, and listening.

H.R. 5 would continue to allow students with the most significant cognitive disabilities to participate in AA-AAS. The bill does not provide for the continued student participation in AA-MAS. States could develop alternate academic achievement standards for students with the most significant cognitive disabilities. As under current law and regulations, there would be no limit on the number of students who could participate in AA-AAS. However, there would also be no limitations on how these students are included in the state accountability system for accountability determinations. That is, there would be no caps on student participation in AA-AAS related to accountability determinations at the LEA or state level.

## **S. 1177**

Similar to current law, states would be required to adopt challenging academic content standards and aligned academic achievement standards (hereafter referred to as academic standards) for mathematics, reading, and science, and any other subject as determined by the state. The standards must include at least three levels of achievement. The state is required to document that the standards are aligned with the following: (1) entrance requirements, without the need for academic remediation, for the system of public higher education in the state; (2) relevant state career and technical education standards; and (3) relevant state early learning guidelines.<sup>16</sup>

Assessments for mathematics and reading would have to be aligned with these standards and be administered in each of grades 3-8 and at least once in grades 9-12. Science assessments would have to be aligned with state standards and would continue to be administered at least once in grades 3-5, 6-9, and 10-12. Assessments would have to provide data on student academic achievement and could also measure student academic growth. States would have the discretion to administer a single annual summative assessment or multiple statewide assessments throughout the school year that result in a single summative score and valid and reliable information on individual student academic achievement or growth. States would also be permitted to use computer adaptive assessments provided that they meet the requirements that apply to all reading, mathematics, and science assessments required under Section 1111(b)(2)(B) and measure whether

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<sup>15</sup> Under Title III-A of current law, states are required to develop standards for English proficiency that are aligned with the four recognized domains of reading, writing, speaking, and listening and that are also aligned with state academic content and achievement standards under Title I-A.

<sup>16</sup> The early learning guidelines to which standards are aligned must be those required under Section 658E(c)(2)(T) of the Child Care and Development Block Grant of 1990.

a student is performing above or below the student's grade level. In addition, each state would be required to set a limit on the aggregate amount of time devoted to assessments (including those required under Title I-A, other assessments required by the state, and assessments required districtwide by LEAs) for each grade.

Each state would be required to implement a single, statewide accountability system to ensure that all public school students graduate from high school prepared for postsecondary education or the workforce without the need for postsecondary remediation. States would no longer be required to establish AMOs, determine AYP, or have an "ultimate goal" with associated consequences toward which states, LEAs, and schools must work. The accountability system would be required to establish annual state-designed goals for all students and each subgroup of students that take into account the progress necessary for all students and students in each of the subgroups to graduate from high school prepared for postsecondary education or the workforce without the need for postsecondary remediation. These goals would have to be established for academic achievement on the state assessments (mathematics, reading, and science), which may also include student growth, and high school graduation rates based on the four-year adjusted cohort graduation rate (currently being used by all states) and, at the state's discretion, the extended-year cohort graduation rate. In addition to setting these goals and annually measuring and reporting on them, states would have to measure and report on (1) an additional academic indicator for public schools that are not high schools, (2) the English language proficiency of English learners, and (3) at least one other valid and reliable indicator of school quality, success, or student supports as determined by the state (e.g., measures of student readiness to enter postsecondary education or the workforce without the need for remediation or measures of student engagement).

Student subgroups for accountability purposes would be the same as those used under current law. S. 1177 would also retain the same subgroups for reporting purposes but for specific reporting requirements related to student achievement, additional subgroups would be added to those included under current law: (1) homeless status, (2) status as a student in foster care, and (3) status as a student with parents who serve in the uniformed services. In addition, for reporting purposes only, the SEA is required to provide cross-tabulated data on student achievement, participation in assessments, performance on the other academic indicator, and high school graduation rates. At a minimum, data must be cross-tabulated by each major racial and ethnic group, gender, English proficiency, and disability status.

S. 1177 would require the state accountability system to measure the annual progress of not less than 95% of all students and each of the subgroups of students who are enrolled in the school and are required to take the assessments. The state must explain how this requirement would be incorporated into the state-designed accountability system determinations. However, S. 1177 includes a requirement stating that no provision in Title I-A, including the 95% participation requirement, should be construed as preempting state or local law regarding a parent's decision to not have a child participate in the statewide academic assessments requirement under Title I-A. S. 1177, however, does not alter the calculation of the 95% participation rate to adjust for any students whose parents may have opted them out of testing. As a result, these provisions appear to be in direct conflict with each other, given that states must meet the 95% participation rate requirement in order to receive Title I-A funds, but this requirement does not preclude laws allowing parents to opt out of Title I-A assessments. It is therefore unclear how these requirements would be enforced by ED if participation rates dropped below 95%.

The accountability system would also have to include a system of “annually identifying and meaningfully differentiating among all public schools in the SEA.” The system would have to be based on all the indicators included in the state’s accountability system with assessment results and graduation rates included as “substantial” factors in the annual identification system. The weight assigned to any individual indicator in the identification system would be determined by the state. The SEA would be required to provide a clear and understandable explanation of how schools are identified and differentiated. An SEA may also identify any middle school or high school as being in need of intervention and support if at least 40% of the children served by such school are from low-income families. Based on this system of identification, each SEA would be required to identify Title I-A participating schools that are in need of intervention or support and that an “evidence-based intervention or support strategy” designed by the state or LEA be implemented. Intervention and supports must be prioritized in the identified schools most in need of such support. Among other things, the intervention and support strategies implemented in an identified school must be implemented in a “manner that is proportional to the specific reasons for identification,” and must distinguish between the lowest-performing schools and other schools identified as being in need of intervention and support for other reasons, such as student subgroups not meeting the annual state-designed goals. S. 1177 would not require the state to identify a specific number or percentage of schools as low performing.

States would be able to reserve up to 4% of the Title I-A funds received by the state for school improvement activities unless doing so would result in an LEA receiving a smaller Title I-A grant than it did during the prior year. Under current law, states are required to reserve the full 4% unless doing so would result in an LEA receiving a smaller Title I-A grant than it did during the prior year. In addition, S. 1177 would retain a program that is similar to the current SIG program that would provide formula grants to states to assist the lowest-performing schools. States would then make competitive subgrants to LEAs serving identified schools.

With respect to English learners, each state would be required to demonstrate that it has adopted English language proficiency standards that are aligned with the required state academic standards for reading and must ensure proficiency in each of the domains for reading, writing, speaking, and listening. English language proficiency assessments aligned with the English proficiency standards would be used to assess English learners annually to determine their level of English proficiency in each of the aforementioned domains.

Under S. 1177, states would continue to be permitted to develop alternate academic achievement standards for students with the most significant cognitive disabilities. States would also have the option of administering alternate assessments aligned with alternate academic achievement standards to students with the most significant cognitive disabilities (AA-AAS). However, the total number of students assessed is a subject using such assessments could not exceed 1% of the total number of all students in the state who are assessed in that subject. The continued participation of students in AA-MAS would be prohibited.

S. 1177 would place numerous prohibitions and limitations on the Secretary’s ability to require that state accountability systems, standards, or assessments meet requirements established by ED. Some of these prohibitions are already included in current law. For example, no officer or employee of the federal government may “mandate, direct, or control” a state, LEA, or school’s “specific instructional content, academic achievement standards and assessment, curriculum, or program of instruction” is included in Section 1905 of current law.

## Distribution of Title I-A Grants to LEAs and Schools

In addition to the aforementioned accountability requirements associated with Title I-A, Title I-A is also the largest grant program in the ESEA, funded at \$14.4 billion in FY2015. It is designed to provide supplementary educational and related services to low-achieving and other students attending pre-kindergarten through grade 12 schools with relatively high concentrations of students from low-income families. Under current law, ED determines Title I-A grants to LEAs based on four separate funding formulas.<sup>17</sup> After calculating grants, ED provides each state with information on the grants calculated for LEAs in the state. The state then makes specific adjustments to the grant amounts, including reserving funds for administration and school improvement and determining grants for charter schools that are their own LEAs. After making adjustments to the grant amounts calculated by ED, the state then provides funds to the LEAs. The LEAs, in turn, distribute funds to schools, often on the basis of the percentage of children in each school eligible for free or reduced-price lunch.<sup>18</sup>

### H.R. 5

Under H.R. 5, a new option for distributing funds from the state level to LEAs and from LEAs to schools would be available.<sup>19</sup> This option is often referred to as the “state option” or “Title I portability.” Under the state option, Title I-A LEA grants would be calculated by ED using the four formulas prescribed by current statute. However, once the grants were calculated, each state would have the option to reallocate the total amount of Title I-A funds that were “earned” by the LEAs in the state under the current law formulas using a new formula. States would be permitted to redistribute all of the Title I-A funds received to LEAs based on each LEA’s share of enrolled eligible children. An eligible child would be defined as a child from a family with an income below 100% of the poverty level based on the most recent data available from the Department of Commerce.<sup>20</sup> LEAs would, in turn, distribute the funds received to individual public schools in the LEA based on each school’s share of enrolled eligible children.<sup>21</sup> That is, any LEA or any public school that enrolled at least one eligible child would receive Title I-A funds under the state option. This is significantly different than current law under which LEAs must meet various criteria to receive a Title I-A grant and funds are generally provided to schools with relatively high percentages of students eligible for free or reduced-price lunch.<sup>22</sup>

<sup>17</sup> The four funding formulas include Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants (EFIG). For more information about how grants are determined under Title I-A, see CRS Report RL34721, *Elementary and Secondary Education Act: An Analytical Review of the Allocation Formulas*, by Rebecca R. Skinner.

<sup>18</sup> Children living in households where income is up to 130% of poverty are eligible for free meals. Children living in households where income is over 130% but up to 185% of poverty are eligible for reduced price meals. For more information, see Department of Agriculture, “Child Nutrition Programs—Income Eligibility Guidelines,” 80 *Federal Register* 17026-17027, March 31, 2015, available online at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-31/pdf/2015-07358.pdf>.

<sup>19</sup> For a more detailed discussion of this option, see CRS Report R43929, *Allocation of Funds Under Title I-A of the Elementary and Secondary Education Act: H.R. 5 and the State Option*, by Rebecca R. Skinner.

<sup>20</sup> Currently, most schools do not have data available on the number of children from families with an income below 100% of the poverty level.

<sup>21</sup> It appears that Title I-A funds would be provided only to students attending public schools and that private school students would no longer be served under the Title I-A program as they have been since the enactment of ESEA.

<sup>22</sup> For more information on how Title I-A grants are made to schools, see CRS Report R40672, *Education for the Disadvantaged: Analysis of Issues for the ESEA Title I-A Allocation Formulas*, by Rebecca R. Skinner.

It should be noted that if a state chose to implement the state option, the amount of funding received by the state under Title I-A would not change. Rather, Title I-A funds would shift only among the LEAs in a given state. As the state option would use different criteria for determining LEA grant amounts than under current law, a given LEA could receive a substantial increase or decrease in its grant amount in comparison to the amount the LEA would receive under current law. Similarly, schools could also see changes in their grant amounts relative to what they may receive under current law should a state choose to implement the state option.

## S. 1177

S. 1177 would not include a Title I-A portability option. However, S. 1177 would alter the process by which schools are annually ranked to determine Title I-A grants. While there are several rules related to Title I-A school selection, under current law, LEAs must generally rank their public schools by their percentage of students from low-income families, and serve them in rank order. This must be done without regard to grade span under current law for any eligible school attendance area<sup>23</sup> in which the concentration of children from low-income families exceeds 75%. Below this point, an LEA can choose to serve schools in rank order at specific grade levels (e.g., only serve elementary schools in order of their percentage of children from low-income families). Under S. 1177, LEAs would have to serve elementary and middle schools with more than 75% of their children from low-income families and high schools with more than 50% of their children from low-income families before choosing to serve schools in rank order by specific grade levels. However, no LEA would be required to reduce the amount of funding provided to elementary and middle schools below the level provided in the fiscal year prior to the enactment of S. 1177 in order to comply with the proposed requirement related to serving high schools under Title I-A.

In addition, S. 1177 would add a fifth Title I-A funding formula, the Equity Grant formula.<sup>24</sup> This new formula would be similar to the existing Education Finance Incentive Grant (EFIG) formula in that grants would initially be calculated at the state level and then state funds would be suballocated to LEAs in a given state. However, the proposed formula would use different factors than the EFIG formula to determine state grant amounts and would alter the calculation of grants at the LEA level as well.<sup>25</sup> The Equity Grant formula would only be implemented if overall appropriations for Title I-A exceeded \$17 billion and would only be used to implement funds in excess of that amount.

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<sup>23</sup> An eligible school attendance area is the geographical area in which the children who are normally served by a particular school reside and in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the LEA as a whole.

<sup>24</sup> The Equity Grant formula was added to S. 1177 by amendment during Senate floor consideration of the bill and is commonly referred to as “the Burr Amendment.”

<sup>25</sup> For example, the Equity Grant formula would not include the effort factor in the determination of state grant amounts under the EFIG formula. The effort factor is a ratio of the three-year average state average per pupil expenditures (APPE) for public K-12 education to the three-year average state personal income per capita income (PCI) divided by the ratio of the three-year average national APPE to the three-year average national PCI. In addition, in determining state grant amounts, the Equity Grant formula uses the same expenditure factor for all states rather than allowing the expenditure factor to vary by state as is done under the EFIG formula. For more information about the EFIG formula, see CRS Report RL34721, *Elementary and Secondary Education Act: An Analytical Review of the Allocation Formulas*, by Rebecca R. Skinner.

## Fiscal Accountability

Both H.R. 5 and S. 1177 would make changes to existing fiscal accountability requirements, including the maintenance of effort and supplement, not supplant requirements. This section provides an overview of each fiscal accountability concept followed by a discussion of how H.R. 5 and S. 1177 would alter the relevant requirements.

### Maintenance of Effort

Maintenance of effort (MOE) requirements have been included in the ESEA since its enactment in 1965.<sup>26</sup> Under current law, in order for LEAs to receive funds under Title I-A and several other formula grant programs, they must meet MOE requirements. MOE requires that LEAs provide, from state and local sources, a level of funding (either aggregate or per pupil) in the preceding year that is at least 90% of the amount provided in the second preceding year for public elementary and secondary education. In other words, an LEA will not meet the MOE requirement if it decreases education spending by more than 10% from year to year.

In general, the ESEA MOE requirements apply to LEAs, not states, and are enforced by SEAs.<sup>27</sup> The requirement is based on a comparison of total (i.e., not program-specific) state and local expenditures for public K-12 education in the preceding fiscal year to those for the second preceding fiscal year. The requirement can be calculated on either an aggregate or a per pupil basis, whichever is more favorable to the LEA.

If an LEA fails to meet the ESEA's MOE requirement, it does not lose all eligibility for grants under the affected ESEA programs. Rather funding is to be reduced proportionally, based on the extent to which the requirement is not met. For example, if state and local public K-12 education expenditures in the preceding year are equal to 85.5% of the amount for the second preceding year—that is, 95% of the required 90% level—then the ESEA grant is to be reduced by 5%. When this occurs, the required level of spending for the succeeding year's calculation is based on the full 90% level of expenditures, not the actual level of spending. Further, the ESEA's MOE requirement can be waived by the Secretary in cases of “(1) exceptional or uncontrollable circumstances, such as a natural disaster; or (2) a precipitous decline in the financial resources of the local educational agency.”<sup>28</sup>

Based on data provided by ED,<sup>29</sup> since the enactment of NCLB in 2002, ED has received 778 requests from LEAs to waive MOE. Of these requests, 71% were approved.<sup>30</sup> In addition, less than 10% of the LEAs that requested a waiver or were approved for a waiver requested a second waiver. According to ED, about 25% of the requests received since 2002 were from LEAs that did not maintain effort in the July 1, 2009, to June 30, 2010, period, the first full MOE year after the recession began in the fall of 2008. During the 2012-2013 school year (most recent data

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<sup>26</sup> P.L. 89-10, Section 207(c)(2).

<sup>27</sup> The one exception is the ESEA Title I-A Education Finance Incentive Grant (EFIG) allocation formula, that has a separate, state-level MOE requirement (Section 1125A(e)) that mirrors the MOE requirement for LEAs.

<sup>28</sup> Section 9521(c).

<sup>29</sup> Unpublished data were provided to CRS in December 2014 and February 2015.

<sup>30</sup> This is the number of MOE requests and percentage of MOE waivers granted as of November 18, 2014.

available), there were over 18,000 LEAs in the 50 states and the District of Columbia.<sup>31</sup> Thus, based on the data provided by ED, it appears that a relatively small proportion of these LEAs requested an MOE waiver from 2002 through 2014.

### **H.R. 5**

H.R. 5 would eliminate the MOE provisions included in the ESEA. This would allow states and LEAs to receive ESEA funds without any requirements related to their level of spending for public K-12 education. As states and LEAs currently are able to increase their spending by any amount or decrease their spending by up to 10% each year, the one new option that the elimination of MOE would permit is for states and LEAs to decrease their spending for public education by more than 10% each year. It is not possible to know how many states and LEAs would choose to reduce their funding for public education by more than 10% each year.

### **S. 1177**

S. 1177 would retain all of the MOE provisions included in current law. However, if an LEA failed to meet its MOE requirement but had met the requirement for the five immediately preceding fiscal years, the LEA would not have its funding reduced. In addition, S. 1177 would include “a change in the organizational structure of the local educational agency” as a second example of exceptional or uncontrollable circumstances for which the Secretary may grant a waiver of the MOE requirements.<sup>32</sup>

### **Supplement, Not Supplant**

Supplement, not supplant (SNS) provisions appear to have originated with the 1969 ESEA amendments (P.L. 91-230). SNS provisions prohibit states and/or LEAs from using federal funds to provide services or support activities that state and/or local funds provide or purchase currently or which, in the absence of federal funds, they would provide or purchase.<sup>33</sup> Further, no LEA is required to provide services under Title I-A through a particular instructional method or in a particular instructional setting in order to demonstrate compliance with the SNS provisions. While SNS provisions apply to numerous ESEA programs (e.g., School Improvement Grants, Migrant Education, English Language Acquisition), the focus of this discussion is on the SNS provisions as they apply to Title I-A, as S. 1177 would specifically alter these provisions.

While MOE compliance is relatively easily defined and monitored, supplanting is arguably more difficult to define operationally, in part because it may depend on knowing what states or LEAs may have done in the absence of federal funding. According to ED policy guidance, “any determination about supplanting is very case specific and it is difficult to provide general guidelines without examining the details of a situation.”<sup>34</sup> There are three conditions under which it is generally presumed that SNS violations have occurred. These include situations in which:

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<sup>31</sup> Data provided by ED, National Center for Education Statistics, Elementary/Secondary Information System.

<sup>32</sup> The MOE requirements that apply to states receiving EFIG would also be changed in similar ways.

<sup>33</sup> When making SNS determinations, an LEA or SEA may exclude “State or local funds expended ... for programs that meet the intent and purposes” of Title I-A. Thus, SNS test need not apply to state or local funds provided under programs that are similar in nature to Title I-A itself.

<sup>34</sup> U.S. Department of Education, Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not (continued...)

1. An LEA used Title I-A funds to provide services that the LEA was required to make available under federal, state, or local law.
2. An LEA used Title I-A funds to provide services that the LEA provided with non-federal funds in the prior year(s).
3. An LEA used Title I-A funds to provide services for children participating in a Title I program that the LEA provided with non-federal funds to children not participating in Title I.

A second set of SNS provisions are included for Title I-A schools that operate schoolwide programs.<sup>35,36</sup> Schools operating schoolwide programs are required to use Title I-A funds to supplement the amount of funds that would, in the absence of Title I-A funds, be made available from non-federal sources for the school, including any funds needed to provide services that are required by law to students with disabilities and English learners. According to guidance provided by ED, it is generally an LEA's responsibility, and not a school's responsibility, to ensure the SNS requirement is met and that a school operating a schoolwide program receives all the state and local funds it would receive if it were not a Title I-A schoolwide program. That is, an LEA cannot reduce the amount of state or local funds received by a schoolwide program because the school receives federal funds to operate the schoolwide program. In its guidance, ED states that an LEA should be able to demonstrate through its regular procedures for distributing funds that state and local funds are distributed "fairly and equitably" to all schools without regard to the receipt of federal education funds.

### **H.R. 5**

H.R. 5 would not alter the SNS provisions that currently apply to Title I-A.

### **S. 1177**

S. 1177 would alter the current SNS provisions that apply to Title I-A. Essentially, S. 1177 would eliminate the first set of SNS provisions that apply to non-schoolwide programs and apply SNS provisions that are similar to those that currently apply to schoolwide programs to all Title I-A schools.<sup>37</sup> S. 1177 would require that an LEA demonstrate that the methodology used to allocate state and local funds to Title I-A schools ensures that the school receives all of the state and local funds it would have received in the absence of Title I-A funds.<sup>38</sup> The bill also specifies that LEAs

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Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements, February 2008, <http://www2.ed.gov/programs/titleiparta/fiscalguid.pdf>.

<sup>35</sup> Ibid.

<sup>36</sup> Generally, schoolwide programs are operated in schools in which the percentage of children from low-income families is at least 40%. During the 2012-2013 school year, the most recent year for which data are available, 74% of all Title I-A schools operated schoolwide programs. (U.S. Department of Education, *Fiscal Year 2016 Budget Summary*, 2015, p. 15.)

<sup>37</sup> The SNS provisions that apply to schoolwide programs under current law are written to apply at the school level as previously discussed. The SNS provisions included in S. 1177 are focused on state and LEA level and do not address the use of funds at the school level. As ED noted in its guidance on the current SNS requirements that apply to schools, however, it is generally the LEA's responsibility, and not a school's responsibility, to ensure that the SNS requirement is met.

<sup>38</sup> The Secretary would be prohibited from establishing "any criterion that specifies, defines, or prescribes the specific (continued...)"

would not be required to identify that an individual cost or services supported with Title I-A funds is supplemental. In addition, S. 1177 would maintain the special rule that LEAs are not required to provide services under Title I-A through a particular instructional method or in a particular instructional setting to demonstrate the SNS is not being violated.

## Educator Quality, Equity, and Effectiveness

With the enactment of NCLB, new provisions were included in the ESEA to establish minimum professional standards for what constitutes a “highly qualified” teacher and ensure an equitable distribution of teacher quality across schools. While the ESEA flexibility package waived some aspects of these requirements, for states with approved ESEA flexibility package applications, it imposed new obligations to reform systems used to evaluate teacher and leader effectiveness. Similar reforms were subsequently required for grantees supported by the federal Teacher Incentive Fund authorized under Title V of the ESEA. These provisions are described below, followed by a discussion of how H.R. 5 and S. 1177 would amend them.

- **Teacher quality.** Current teacher quality provisions require that teachers possess a baccalaureate degree, full state teaching certification, and demonstrated subject-matter knowledge in the areas in which they teach. Each state receiving Title I-A funds was required to have a plan to ensure that, by no later than the end of the 2005-2006 school year, all public school teachers teaching in core academic subjects<sup>39</sup> within the state met these requirements.<sup>40</sup>
- **Equitable distribution.** Current law requires that states ensure Title I-A schools provide instruction by highly qualified instructional staff and take specific steps to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.
- **Evaluating teacher and leader effectiveness.** LEAs in states that have approved applications for the ESEA flexibility package as well as those receiving support under the Teacher Incentive Fund must either adopt state-designed educator evaluation systems or design and implement locally-developed evaluation systems to identify effective teachers and leaders. These systems must consider gains in student academic achievement as well as classroom evaluations conducted multiple times during each school year and must be developed with the input of teachers and school leaders.

### H.R. 5

H.R. 5 would eliminate the current highly qualified teacher requirement as well as the provision to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

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(...continued)

methodology” an LEA uses to allocate state and local funds to Title I-A schools.

<sup>39</sup> Current law defines core academic subjects as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

<sup>40</sup> These plans are available online at <http://www2.ed.gov/programs/teacherqual/hqtplans/index.html>.

H.R. 5 would allow states to use Title II-A funds to provide technical assistance to LEAs that choose to develop or implement evaluation systems for teachers or school leaders. LEAs would be allowed to use Title II-A funds for the development and implementation of teacher or school leader evaluation systems. Use of student achievement data in such systems would not be required.

### **S. 1177**

S. 1177 would eliminate the current highly qualified teacher requirement and instead require state plans to include an assurance that all teachers and paraprofessionals working in programs supported by Title I-A funds meet applicable state certification and licensure requirements, including alternative certification requirements. The bill would retain the current equitable distribution provision, but would move it from the state plan to the LEA plan and replace the term “unqualified” with “ineffective.”

S. 1177 would allow states to use Title II-A funds to provide technical assistance to LEAs that choose to develop or implement evaluation systems for teachers or school leaders. LEAs would be allowed to use Title II-A funds for the development and implementation of teacher or school leader evaluation systems that are based in part on evidence of student achievement which may include student growth. S. 1177 would prohibit the Secretary or any other officer or employee of the federal government from mandating, directing, or controlling any educator evaluation system, or state or local definitions of effectiveness or professional standards.

## **Grants to States and LEAs to Support Teachers and Leaders**

NCLB authorized a new ESEA program under Title II-A to support efforts to meet the law’s teacher quality requirements and provide for the training and recruitment of highly qualified teachers, principals and assistant principals. NCLB also provided authority under Title V-D-1 for the Secretary to support “nationally significant” programs, which was later used to establish the Teacher Incentive Fund (TIF) in FY2006. The program supports pay-for-performance programs and compensation system reforms.<sup>41</sup>

- **Title II-A.** The Teacher and Principal Training and Recruitment Fund (Title II-A) provides formula grants to support state and local efforts to improve the quality of school teachers, principals, and assistant principals through a variety of activities. The Title II-A allocation formula provides each state with a base guarantee of funding equal to the amount it received for FY2001 under three antecedent programs.<sup>42</sup> Thirty-five percent of any excess funding is allocated according to each state’s share of the school-aged population (5-17) and 65% of the excess is allocated according to each state’s share of the school-aged population living in poverty. Each state is assured 0.5% of this excess. At the state level, 95% of the state grant is to be distributed as subgrants to LEAs. Each LEA gets a base guarantee of the FY2001 amounts and the remainder distributed by formula. More specifically, 20% of the remainder is allocated according to

<sup>41</sup> Congress enacted TIF through the Labor-HHS-Education Appropriations Act of 2006 (P.L. 109-149).

<sup>42</sup> The antecedent programs include the Eisenhower Professional Development, Class Size Reduction, and Staff Assistance programs.

each LEA's share of the school-aged population (5-17) and 80% is allocated according to each LEA's share of the school-aged population living in poverty.

- **Teacher Incentive Fund.** The Teacher Incentive Fund (Title V-D-1) provides competitive grants to LEAs, including charter schools that are LEAs, or states, or partnerships between (1) a state and/or LEA and (2) at least one nonprofit organization. TIF grantees are to develop and implement performance-based teacher and principal compensation systems for high-need schools. These systems must consider gains in student academic achievement and classroom evaluations conducted multiple times during each school year, among other factors and provide educators incentives to take on additional responsibilities and leadership roles.

## H.R. 5

H.R. 5 would amend the Title II-A formula by eliminating the base guarantee for state and LEA grants. The bill would amend the population and poverty factors so that each would have equal weight in the allocation of funds. That is, half of the funds would be allocated according to shares of the school-aged population (5-17) and half would be allocated according to shares of the school-aged population living in poverty. However, the new population and poverty factors would only be used in a fiscal year in which the Secretary certified to Congress that LEAs “that serve a high percentage of students from families with incomes below the poverty line” would not receive a smaller grant amount than in FY2015.<sup>43</sup> Without such certification, funds would be allocated according to current law. The bill would retain the current 0.5% small state minimum.

H.R. 5 would authorize, but not require, TIF-related activities in a new state formula grant program under Part B of Title II. Each state would receive an amount equal to its share of the school-aged population (5-17). No state would receive less than 1% of the amount available for state grants. A state receiving funds would be required to subgrant 92% of its award to an eligible entity which may be (1) an LEA or consortium of LEAs; (2) an institution of higher education or consortium of such institutions in partnership with an LEA or consortium of LEAs; (3) a for-profit organization, a nonprofit organization, or a consortium of for-profit or nonprofit organizations in partnership with an LEA or consortium of LEAs. Grantees may use funds for activities similar to TIF—such as differential pay, performance-based pay, and career ladders. However, grantees may instead use Title II-B funds for other activities not related to TIF—such as preparation academies, recruitment of mid-career non-teaching professionals, and professional development.

## S. 1177

S. 1177 would amend the base guarantee and formula factors in the Title II-A formula. The base guarantee for state grants would be a declining fraction of the amount each state received in FY2001. S. 1177 would eliminate the base guarantee for LEA grants. **Table 1** displays the percent of FY2001 awards each state would receive as its base guarantee under the bill.

<sup>43</sup> H.R. 5 does not define what is meant by a “high percentage” in this provision.

**Table I. Percent of FY2001 Award Each State Would Receive under Title II-A as Amended by S. 1177**

Fiscal Year	Percentage of FY2001 Award
2016	85.71%
2017	71.42%
2018	57.13%
2019	42.84%
2020	28.55%
2021	14.26%
2022 and succeeding years	0.00%

**Source:** Table prepared by CRS based on an analysis of S. 1177 as reported.

The bill would amend the Title II-A state grant population and poverty factors to equal the current factors for LEA grants. That is, 20% of the funds would be allocated according to each state's share of the school-aged population (5-17) and 80% would be allocated according to each state's share of the school-aged population living in poverty. The bill would retain the current 0.5% small state minimum.

S. 1177 would authorize the TIF program under Title II-B and retain the competitive grant structure and eligible entities in current law. Unlike H.R. 5, S. 1177 would not allow Title II-B funds to be used for non-TIF activities. Instead, grantees would be required to develop, implement, improve, or expand performance-based compensation systems or human capital management systems. As part of these systems, grantees may use funds to develop or improve evaluation of teacher, principal, and school leader performance; conduct outreach to improve support for evaluation; improve principal and school leader authority over human capital decision-making; and provide differential pay and career ladders.

## Targeted Support Versus Block Grant

The ESEA includes several formula grant programs that provide grants to states, LEAs, or other entities (e.g., Indian tribes). These programs provide aid to support specific student populations (e.g., disadvantaged students, limited English proficient students), provide additional aid to entities based on their location (i.e., rural LEAs), or provide funds for a specific set of activities (e.g., those related to literacy or school safety). One formula grant program, Innovative Programs, is authorized to provide block grants to states and LEAs to implement a variety of activities. The ESEA also contains numerous competitive grant programs, which generally receive less funding than formula grant programs. The competitive grant programs included in the ESEA address issues such as school counseling, arts education, physical education, charter schools, and magnet schools. As shown in **Table 2**, many of the competitive grant programs and some of the formula grant programs included in the ESEA are no longer funded in FY2015.

## H.R. 5

H.R. 5 would retain some, but not all, of the existing formula grant programs and would eliminate most competitive grant programs (see **Table 2**). However, H.R. 5 includes a new block grant program (the Local Academic Flexible grant) that would be authorized annually at \$2.3 billion and would provide formula grants to states. In contrast, the Innovative Programs grant program, the block grant included under current law, was last authorized at \$600 million and last funded at \$99 million in FY2007. The new block grant program would support activities designed to improve academic achievement and student engagement and protect student safety, and would afford states and eligible entities (which include LEAs) considerable flexibility in how funds are used.

Under the new block grant program, states would be required to use at least 75% of the funds received to award competitive grants<sup>44</sup> to eligible entities which include partnerships of LEAs, community-based organizations (CBOs), institutions of higher education (IHEs), business entities, and nongovernmental entities.<sup>45</sup> All partnerships would be required to include at least one LEA. In addition, the state would be required to use not less than 8% of the funds received to award competitive grants to nongovernmental entities.<sup>46</sup> Under H.R. 5, SEAs may reserve not more than 17% of the funds received for state activities and administration. For instance, in addition to using funds for administrative costs, SEAs could use funds for developing standards and assessments, administering assessments, monitoring and evaluating programs and activities receiving funding, providing training and technical assistance, implementing statewide academic focused programs, sharing evidence-based and other effective strategies, awarding grants for blended learning projects, auditing state assessments, and developing and implementing a plan to improve the state assessment system.

Grants to eligible entities could be used for (1) supplemental student support activities (e.g., before or after school activities, summer school activities, tutoring, expanded learning time) but not athletics or in-school learning activities; (2) activities to support students (e.g., academic subject specific programs, extended learning time programs, dual enrollment, parent engagement) but not class-size reduction, construction, or staff compensation; and (3) accountability-based activities designed to enhance school safety. In addition, an eligible entity that receives a grant may also use the funds to conduct an audit of the local assessments administered by the LEA and develop and implement a plan to improve the local assessment system. All eligible entities that submit an application that meets the requirements of the grant application process would receive a grant of at least \$10,000. An LEA could only receive one grant award per year, but the grant could support multiple projects.

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<sup>44</sup> All eligible entities that submit an application that meets the statutory requirements would receive a grant of at least \$10,000.

<sup>45</sup> A single LEA is not eligible to apply for a grant. An LEA must apply in partnership with a CBO, IHE, business entity, or nongovernmental agency. A consortium of LEAs must also partner with at least one of the aforementioned types of organizations. A CBO or IHE must apply in partnership with an LEA and may also partner with a business entity or nongovernmental entity. Similarly, a business entity must apply in partnership with an LEA, and may also partner with a CBO, IHE, or nongovernmental agency.

<sup>46</sup> The bill specifies that nongovernmental entities include public or private organizations, community-based or faith-based organizations, and business entities. Nongovernmental entities are not required to enter into a partnership with an LEA or other entity.

Grants to nongovernmental entities would be required to be used for a program or project to increase the academic achievement of public school students attending a public elementary or secondary school. Grantees would be required to provide non-federal matching funds of not less than 50% of the grant amount.

It is possible that funds provided under this program could be used to support activities that are currently permitted under the ESEA, but which would no longer have a targeted funding stream under H.R. 5. However, there is no way to know whether a state or an LEA would receive the same amount of funding, less funding, or more funding under the proposed block grant program as it would if programs that would be eliminated under H.R. 5 were retained.

## **S. 1177**

S. 1177 would retain most formula grant programs that received funding in FY2015. At the same time, it would eliminate several competitive grant programs (see **Table 2**). The bill would create a block grant program, the Safe and Healthy Students program, which would be a new program under Title IV-A. The block grant program would be designed to “improve students’ safety, health, and well-being, and academic achievement during and after the school day ...” Funds would be provided to states by formula, and states would subsequently make formula grants to LEAs. LEAs would be required to conduct a needs assessment prior to applying for funds that takes into account school-level data on indicators or measures of school quality, climate and safety, and discipline, as well as risk factors in the community, school, family, or “peer-individual domains” that are known to be predictive of various behaviors (e.g., violent behavior) and that have an effect on the physical and mental health and well-being of youth in the school and community.

Under this program, funds could be used in ways previously required or permitted by several ESEA programs. For example, LEAs would be permitted to use funds under the program to foster safe and drug-free environments; provide extended learning opportunities, including before and after school programs; provide school-based mental health services; provide school counseling programs; provide structured physical education programs; and provide programs and activities that offer a “well-rounded educational experience.” LEAs would also be permitted to use the funds for other activities and programs identified as necessary based on the needs assessment conducted by the LEA that “will increase student achievement and otherwise meet the purposes of this part.”

It is possible that funds provided under this program could be used to support activities that are currently permitted under the ESEA, but which would no longer have a targeted funding stream under S. 1177. However, there is no way to know whether a state or an LEA would receive the same amount of funding, less funding, or more funding under the proposed block grant program as it would if programs that would be eliminated under S. 1177 were retained. In addition, several of the activities for which Title IV-A funds could be used would also be allowable uses of funds under other programs included in S. 1177 such as the 21<sup>st</sup> Century Community Learning Centers, Elementary and Secondary School Counseling, and Physical Education programs.

## Structural Orientation of H.R. 5 and S. 1177 Compared With Current Law

**Table 2** provides a structural orientation by ESEA title and part of how H.R. 5 and S. 1177 would modify current law based primarily on line-item amounts for ESEA programs included in appropriations tables.<sup>47</sup> This list of “programs” does not take into account the number of programs, projects, or activities that may be funded under a single line-item appropriation, so the actual number of ESEA programs, projects, or activities being supported through appropriations is not shown. Current ESEA programs under which the federal government provides grants to the initial grantee (as opposed to a subgrantee) by formula are noted in the table.

The table provides appropriations information for FY2015. It also indicates where H.R. 5 and S. 1177 would place a given program in a reauthorized ESEA if the program is retained. It should be noted that an indication that a program would not be retained does not mean that all of the activities authorized under current law for the program would be eliminated. The activities may be continued under a different program. For example, while H.R. 5 and S. 1177 would no longer retain many of the currently authorized ESEA programs, both bills would include a block grant program under which funds could potentially be used for similar activities as were permitted or required under some programs that would not be retained.

At the same time, an indication that a program would be retained does not mean that it would be retained without changes. For example, while H.R. 5 and S. 1177 would retain Title II-A, a state grant program focused on teachers, both bills would modify the formula used to award grants and would change the uses of funds.

**Table 2. ESEA Programs Included in Line-Item Appropriations Tables and Their Treatment Under H.R. 5 and S. 1177**

Program	Current Law		Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
School Improvement Grants (formula grant)	Title I, Section 1003(g)	\$505,756	Would not be retained	Would be retained as Section 1114(c)
Title I-A Grants to Local Educational Agencies (LEAs; formula grant)	Title I-A	\$14,409,802	Would be retained as Title I-A-I	Would be retained as Title I-A
Reading First (formula grant)	Title I-B-1	\$0	Would not be retained	Would not be retained
Early Reading First	Title I-B-2	\$0	Would not be retained	Would not be retained

<sup>47</sup> **Table 2** also includes all 21 subparts of Title V-D, the Fund for the Improvement of Education (FIE).

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Even Start (formula grant)	Title I-B-3	\$0	Would not be retained	Would not be retained
Improving Literacy through School Libraries	Title I-B-4	\$0	Would not be retained	Would not be retained
Migrant Education Program (formula grant)	Title I-C	\$374,751	Would be retained as Title I-A-2	Would be retained as Title I-C
Neglected and Delinquent (formula grant)	Title I-D	\$47,614	Would be retained as Title I-A-3	Would be retained as Title I-D
National Assessment of Title I	Title I-E (Section 1501)	\$710	Would be retained as Title I-B	Would be retained as Section 9601 (b) <sup>a</sup>
Striving Readers	Title I-E (Section 1502)	\$160,000	Would not be retained	Would be retained as Title II-D
Close Up Fellowships	Title I-E (Section 1504)	\$0	Would not be retained	Would not be retained
Comprehensive School Reform	Title I-F	\$0	Would not be retained	Would not be retained
Advanced Placement	Title I-G	\$28,483	Would not be retained	Would be retained as Title V-E
School Dropout Prevention <sup>b</sup>	Title I-H	\$0	Would not be retained	Would not be retained
Teacher and Principal Training and Recruiting Fund (Grants to States, LEAs, and Eligible Partnerships; formula grant)	Title II-A	\$2,349,830	Would be retained as Title II-A	Would be retained as Title II-A
School Leadership	Title II-A-5 (Section 2151 (b))	\$16,368	Would not be retained	Would not be retained
Advanced Credentialing	Title II-A-5 (Section 2151 (c))	\$0	Would not be retained	Would not be retained
Math and Science Partnerships (formula grant) <sup>c</sup>	Title II-B	\$152,717	Would not be retained	Would not be retained
Transition to Teaching	Title II-C-1-B	\$13,700	Would not be retained	Would not be retained
National Writing Project	Title II-C-2	\$0	Would not be retained	Would not be retained

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Civic Education (We the People)	Title II-C-3 (Section 2344)	\$0	Would not be retained	Would not be retained
Cooperative Education Exchange (Civic Education)	Title II-C-3 (Section 2345)	\$0	Would not be retained	Would not be retained
Teaching of Traditional American History	Title II-C-4	\$0	Would not be retained	Would be retained as Title II-C, Section 2302
Educational Technology	Title II-D	\$0	Would not be retained <sup>d</sup>	Would not be retained <sup>e</sup>
Ready to Learn Television	Title II-D-3	\$25,741	Would not be retained	Would be retained as Title V-F
English Language Acquisition (formula grant)	Title III-A	\$737,400	Would be retained as Title I-A-4	Would be retained as Title III
Safe and Drug Free, State Grants (formula grant)	Title IV-A-1	\$0	Would not be retained	Would not be retained
Safe and Drug Free, National Programs	Title IV-A-2	\$70,000	Would not be retained	Would not be retained
Alcohol Abuse Reduction	Title IV-A-2 (Section 4129)	\$0	Would not be retained	Would not be retained
Mentoring Programs	Title IV-A-2 (Section 4130)	\$0	Would not be retained	Would not be retained
21 <sup>st</sup> Century Community Learning Centers (formula grant)	Title IV-B	\$1,151,673	Would not be retained	Would be retained as Title IV-B <sup>f</sup>
Innovative Programs (block grant, formula grant)	Title V-A	\$0	Would not be retained <sup>g</sup>	Would not be retained <sup>h</sup>
Charter School Grants	Title V-B-1	\$253,172 <sup>i</sup>	Would be retained as Title III-A-1	Would be retained as Title V-A
Charter School Facilities Incentive Grants	Title V-B-1 (Section 5205(b))	(included in Charter School Grants)	Would be retained as Title III-A-1	Would be retained as Title V-A

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation	Title V-B-2	(included in Charter School Grants)	Would be retained as Title III-A-1	Would be retained as Title V-A
Voluntary Public School Choice	Title V-B-3	\$0	Would not be retained	Would not be retained
Magnet Schools Assistance	Title V-C	\$91,647	Would be retained as Title III-A-2	Would be retained as Title V-B
Fund for the Improvement of Education, National Programs	Title V-D-1	\$38,000	Would not be retained	Would not be retained
Teacher Incentive Fund <sup>k</sup>	Title V-D-1	\$230,000	Would not be retained <sup>l</sup>	Would be retained as Title II-B
Preschool Development Grants <sup>k</sup>	Title V-D-1	\$250,000	Would not be retained	Would not be retained
Promise Neighborhoods <sup>k</sup>	Title V-D-1	\$56,754	Would not be retained	Would be retained as Title V-L
Academies for American History and Civics	Title V-D-1	\$0	Would not be retained	Would be retained as Title II-C, Section 2303
Elementary and Secondary School Counseling	Title V-D-2	\$49,561	Would not be retained	Would be retained as Title IV-C
Character Education	Title V-D-3	\$0	Would not be retained	Would not be retained
Smaller Learning Communities	Title V-D-4	\$0	Would not be retained	Would not be retained
Reading is Fundamental	Title V-D-5	\$0	Would not be retained	Would not be retained
Javits Gifted and Talented	Title V-D-6	\$10,000	Would not be retained	Would be retained as Title V-C
Star Schools Program	Title V-D-7	\$0	Would not be retained	Would not be retained
Ready to Teach	Title V-D-8	\$0	Would not be retained	Would not be retained
Foreign Language Assistance	Title V-D-9	\$0	Would not be retained	Would not be retained

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Carol M. White Physical Education Program	Title V-D-10	\$47,000	Would not be retained	Would be retained as Title IV-D
Community Technology Centers	Title V-D-11	\$0	Would not be retained	Would not be retained
Exchanges with Historic Whaling and Trading Partners	Title V-D-12	\$0	Would not be retained	Would not be retained
Excellence in Economic Education	Title V-D-13	\$0	Would not be retained	Would not be retained
Grants to Improve the Mental Health of Children, Mental Health Integration in Schools	Title V-D-14 (Section 5541)	\$0	Would not be retained	Would not be retained
Grants to Improve the Mental Health of Children, Foundations for Learning	Title V-D-14 (Section 5542)	\$0	Would not be retained	Would not be retained
Arts in Education	Title V-D-15	\$25,000	Would not be retained	Would not be retained <sup>m</sup>
Parental Assistance and Local Family Information Centers	Title V-D-16	\$0	Would not be retained <sup>n</sup>	Would not be retained <sup>n</sup>
Combating Domestic Violence	Title V-D-17	\$0	Would not be retained	Would not be retained
Healthy, High-Performance Schools	Title V-D-18	\$0	Would not be retained	Would not be retained
Grants for Capital Expenses of Providing Equitable Services for Private School Students	Title V-D-19	\$0	Would not be retained	Would not be retained
Additional Assistance for Certain Local Educational Agencies Impacted by Federal Property Acquisition	Title V-D-20	\$0	Would not be retained	Would not be retained

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Women's Educational Equity Act	Title V-D-21	\$0	Would not be retained	Would not be retained
Grants for State Assessments and Enhanced Assessment Instruments (formula and competitive grants) <sup>o</sup>	Title VI-A-1 (Section 6111)	\$378,000	Would not be retained	Would be retained as Title I-B
Small, Rural School Achievement Program (formula grant)	Title VI-B-1	\$84,920	Would be retained as Title I-A-5-A	Would be retained as Title VI-B-1
Rural and Low-Income School Program (formula grant)	Title VI-B-2	\$84,920	Would be retained as Title I-A-5-B	Would be retained as Title VI-B-2
Indian Education, Grants to LEAs (formula grant)	Title VII-A-1	\$100,381	Would be retained as Title V-A-1	Would be retained as Title VII-A-1
Special Programs and Projects to Improve Educational Opportunities for Indian Children	Title VII-A-2	\$17,993	Would be retained as Title V-A-2	Would be retained as Title VII-A-2
Indian Education, National Activities	Title VII-A-3	\$5,565	Would be retained as Title V-A-3	Would be retained as Title VII-A-3
Native Hawaiian Student Education	Title VII-B	\$32,397	Would be retained as Title V-C	Would be retained as Title VII-B
Alaska Native Student Education	Title VII-C	\$31,453	Would be retained as Title V-B	Would be retained as Title VII-C
Impact Aid, Payments Relating to Federal Acquisition of Real Property (formula grant)	Title VIII (Section 8002)	\$66,813	Would be retained as Title IV, Section 4002	Would be retained as Title VIII, Section 8002
Impact Aid, Payments for Eligible Federally Connected Children (Basic Support Payments; formula grant)	Title VIII (Section 8003(b))	\$1,151,233	Would be retained as Title IV, Section 4003(b)	Would be retained as Title VIII, Section 8003(b)

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Impact Aid, Payments for Eligible Federally Connected Children (Payments for Children with Disabilities; formula grant)	Title VIII (Section 8003(d))	\$48,316	Would be retained as Title IV, Section 4003(d)	Would be retained as Title VIII, Section 8003(d)
Construction (formula and competitive grant) <sup>P</sup>	Title VIII (Section 8007)	\$17,406	Would be retained as Title IV, Section 4007	Would be retained as Title VIII, Section 8007
Facilities Maintenance	Title VIII (Section 8008)	\$4,835	Would be retained as Title IV, Section 4008	Would be retained as Title VIII, Section 8008
<b>New Programs Included in H.R. 5</b>				
Teacher and School Leader Flexible Grant	na	na	Would be included as Title II-B	na
Family Engagement in Education Programs	na	na	Would be included as Title III-A-3	Would be included as Title IV-E
Local Academic Flexible Grant (block grant)	na	na	Would be included as Title III-B	na
<b>New Programs Included in S. 1177</b>				
Improving Science, Technology, Engineering, and Mathematics (STEM) Instruction and Achievement	na	na	na	Would be included as Title II-E
Safe and Healthy Students: Grants to States and Local Educational Agencies (block grant)	na	na	na	Would be included as Title IV-A
Family Engagement in Education Programs	na	na	Would be included as Title III-A-3	Would be included as Title IV-E
Grants for Education Innovation and Research	na	na	na	Would be included as Title V-D

Current Law			Treatment Under H.R. 5, as Passed by the House	Treatment Under S. 1177, as Passed by the Senate
Program	Statutory Citation	FY2015 Appropriation (\$ in thousands)		
Innovative Technology Expands Children's Horizons (I-TECH)	na	na	na	Would be included as Title V-G
Literacy and Arts Education	na <sup>j</sup>	na <sup>j</sup>	na	Would be included as Title V-H
Early Learning Alignment and Improvement Grants	na	na	na	Would be included as Title V-I
Full-Service Community Schools	na <sup>j</sup>	na <sup>j</sup>	na	Would be included as Title V-K
Native American and Alaska Native Language Immersion Schools and Programs	na	na	na	Would be included as Title VII-D

**Source:** Table prepared by CRS, based on CRS analysis of the Elementary and Secondary Education Act (most recently amended by P.L. 107-110), H.R. 5, and S. 1177. FY2015 appropriations data for all programs was provided by the U.S. Department of Education, Budget Service.

**Notes:** An indication that a program would be retained does not mean that the program would not be modified or have its name changed. An indication that a program would not be retained does not mean that all of the activities authorized under current law would be eliminated. They may be included in a different program.

- a. S. 1177 would continue to provide for the evaluation of Title I programs. Unlike current law, however, S. 1177 would not specify issues to be examined.
- b. This program is also referred to as the High School Graduation Initiative.
- c. This is a formula grant program when appropriations equal or exceed \$100 million. Otherwise, competitive grants are made to eligible partnerships.
- d. Title IX of H.R. 5 would authorize the Schools of the Future Act, which would support technology-based learning. This program would not be part of the ESEA.
- e. S. 1177 would create a new program focused on education technology.
- f. Under S. 1177, using funds for extended learning time would be added as an allowable use of funds. States can currently use 21<sup>st</sup> Century Community Learning Centers program funds for this purpose under the ESEA flexibility package.
- g. H.R. 5 would create a new block grant program.
- h. S. 1177 would create a new block grant program.
- i. The Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) required that up to \$11,000,000 of the amount appropriated for the Charter School Program be used for Charter School Facilities Incentive Grants and at least \$13,000,000 be used for Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation.
- j. The Title V-D-I authority under current law is used to authorize several programs including the Teacher Incentive Fund and Promise Neighborhoods. Several programs authorized under this authority are not included as line items on appropriations tables. Rather, they generally appear in the explanatory statement

- that accompanies the Labor, Health and Human Services, Education, and Related Agencies annual appropriations act. For FY2015 appropriations, the explanatory statement indicated that funds should be provided for the Innovative Approaches to Literacy program. This program would be retained through the new Literacy and Arts Education program created under S. 1177. The explanatory statement also indicated that funds should be provided for Full-Service Community Schools. This program would be retained as the Full-Service Community Schools program in S. 1177.
- k. This program was enacted through appropriations language using authority available to the Secretary under ESEA Title V-D-1.
  - l. While H.R. 5 would not retain the Teacher Incentive Fund program, funds under the Title II-B program that would be created under H.R. 5 could be used for similar activities.
  - m. S. 1177 would create a new arts education program under the Literacy and Arts Education program.
  - n. H.R. 5 and S. 1177 would create a new program focused on family engagement in education.
  - o. The majority of funds are provided to states through formula grants. A relatively small portion of the funds are provided to states through Grants for Enhanced Assessment Instruments, a competitive grant program.
  - p. Under this program, 40% of funds appropriated are to be awarded by formula and 60% are to be awarded through competitive grants. In recent years, appropriations bills have directed that all the funds be used either for formula or competitive grants.

## Comparison of ESEA Authorizations of Appropriations Under Current Law, H.R. 5, and S. 1177

**Table 3** examines specific ESEA program authorizations of appropriations included in current law<sup>48</sup> compared with those included in H.R. 5 and S. 1177.<sup>49</sup> Overall, current law includes 46 specific authorizations of appropriations compared with 16 in H.R. 5 and 41 in S. 1177. It should be noted that a single authorization of appropriations may apply to more than one program. **Table 3** was designed to show the actual number of explicit ESEA program authorizations of appropriations included in current law, H.R. 5, and S. 1177. In order to make this table more useful, however, the table notes whether proposed statutory language indicated that certain programs would receive a specific share of a given authorization of appropriations. For example, H.R. 5 includes only one authorization of appropriations for Title I-A, but proposed statutory language would provide a specified share of that authorization of appropriations to multiple, individual programs.

For each authorization of appropriations included in H.R. 5 with the exception of Title II, the same amount is authorized for each fiscal year from FY2016 through FY2019. That is, the authorization of appropriations level is the same for FY2016 as it is for FY2019 for non-Title II

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<sup>48</sup> FY2007 was the last year for which ESEA programs had authorizations included in statutory language. While ESEA programs are no longer authorized, they continue to receive annual appropriations. This is considered an implicit authorization of the programs.

<sup>49</sup> H.R. 5 also includes an authorization of appropriations for the McKinney-Vento Homeless Education program. The authorization would be for \$65,042,000 for each of FY2016 through FY2021. S. 1177 provides an authorization of appropriations for this program of “such sums as may be necessary.” These authorizations of appropriations are not included in the discussion of ESEA authorizations of appropriations, as the McKinney-Vento Homeless Education program is not an ESEA program.

programs. For programs authorized under Title II, the authorization of appropriations period extends from FY2016 through FY2021 and would be the same amount for each fiscal year.

For S. 1177, all authorizations of appropriations are “such sums as may be necessary” and most programs have authorizations of appropriations for FY2016 through FY2021.<sup>50</sup> That is, no specific dollar amounts have been specified for any of the programs that would be authorized by S. 1177.

The total authorized level of appropriations in H.R. 5 for the ESEA is \$23.2 billion. FY2015 appropriations for the ESEA under current law are \$23.1 billion. The total ESEA authorization for the last year for which current law had authorizations (FY2007) specified was \$28.9 billion. It should be noted that an authorization of an appropriation is only authority to appropriate funds. Congress can and does enact appropriations at funding levels that differ from authorization levels.

**Table 3. Specific Authorizations of Appropriations Under the ESEA and Treatment Under H.R. 5 and S. 1177**

Current Law			H.R. 5, as Passed by the House, for FY2016 through FY2019 <sup>a</sup>	S. 1177, as passed by the Senate, for FY2016 through FY2021 <sup>b</sup>
Program	Statutory Citation for Program	FY2007 Authorization <sup>c</sup>		
School Improvement Grants	Title I, Section 1003(g)	Such sums	Would not be authorized	Such sums
Title I-A Grants to Local Educational Agencies (LEAs) <sup>d</sup> : Basic Grants, Concentration Grants, and Targeted Grants	Title I-A	\$25,000,000,000 (for all four grants, including Education Finance Incentive Grants, see below)	Would receive 91.44% (\$14,854,577,047) of a single authorization for programs serving special populations under Title I-A <sup>d</sup>	Such sums
Title I-A Grants to LEAs: Education Finance Incentive Grants (EFIG)	Title I-A	Such sums (but included in total authorization amount for Title I-A as well, see above)	Would be included in the authorization for the other Title I-A Grants to LEAs (see above)	Would be included in the authorization for the other Title I-A Grants to LEAs (see above)
Reading First	Title I-B-1	Such sums	Would not be authorized	Would not be authorized
Early Reading First	Title I-B-2	Such sums	Would not be authorized	Would not be authorized
Even Start	Title I-B-3	Such sums	Would not be authorized	Would not be authorized
Literacy Through School Libraries	Title I-B-4	Such sums	Would not be authorized	Would not be authorized

<sup>50</sup> The Innovative Technology Expands Children’s Horizons program does not have years specified for the authorization of appropriations. That is, the program has a permanent authorization of appropriations.

Current Law			H.R. 5, as Passed by the House, for FY2016 through FY2019 <sup>a</sup>	S. 1177, as passed by the Senate, for FY2016 through FY2021 <sup>b</sup>
Program	Statutory Citation for Program	FY2007 Authorization <sup>c</sup>		
Migrant Education	Title I-C	Such sums	Would receive 2.45% (\$398,006,494) of a single authorization for programs serving special populations under Title I-A <sup>d</sup>	Such sums
Neglected and Delinquent	Title I-D	Such sums	Would receive 0.31% (\$50,360,005) of a single authorization for programs serving special populations under Title I-A <sup>d</sup>	Such sums
Evaluation and Demonstration	Title I-E, Section 1501 and 1502	Such sums	National Assessment would be authorized at \$710,000	Such sums (two authorizations of appropriations) <sup>e</sup>
Close Up Fellowships	Title I-E, Section 1504	Such sums	Would not be authorized	Would not be authorized
Comprehensive School Reform	Title I-F	Such sums	Would not be authorized	Would not be authorized
Advanced Placement	Title I-G	Such sums	Would not be authorized	Such sums
Dropout Prevention	Title I-H	Such sums	Would not be authorized	Would not be authorized
Teacher Quality State Grants	Title II-A	Such sums	Would receive 75% (\$2,091,267,000) of a single authorization for teacher and principal programs under Title II <sup>f</sup>	Such sums
Teacher Quality National Programs	Title II-A	Such sums	Would not be authorized	Such sums
Mathematics and Science Partnerships	Title II-B	Such sums	Would not be authorized	Would not be authorized
Transitions to Teaching	Title II-C-1	Such sums	Would not be authorized	Would not be authorized
National Writing Project	Title II-C-2	Such sums	Would not be authorized	Would not be authorized
Civic Education	Title II-C-3	Such sums	Would not be authorized	Would not be authorized

Current Law			H.R. 5, as Passed by the House, for FY2016 through FY2019 <sup>a</sup>	S. 1177, as passed by the Senate, for FY2016 through FY2021 <sup>b</sup>
Program	Statutory Citation for Program	FY2007 Authorization <sup>c</sup>		
Teaching of Traditional American History	Title II-C-4	Such sums	Would not be authorized	Would share an authorization of appropriations with the Presidential and Congressional Academies for American History and Civics under Title II-C
Education Technology	Title II-D-1 and 2	Such sums	Would not be authorized <sup>g</sup>	Would not be authorized <sup>h</sup>
Ready-to-Learn Television	Title II-D-3	Such sums	Would not be authorized	Such sums
English Language Acquisition and Instruction	Title III-A and B	Such sums	Would receive 4.6% (\$747,277,498) of a single authorization for programs serving special populations under Title I-A <sup>d</sup>	Such sums
Emergency Immigrant Education	Title III-B-4	Such sums	Would not be authorized	Would not be authorized
Safe and Drug-Free Schools and Communities State Grants	Title IV-A-1	Such sums	Would not be authorized	Would not be authorized
Safe and Drug-Free Schools and Communities National Programs	Title IV-A-2	Such sums	Would not be authorized	Would not be authorized
21 <sup>st</sup> Century Community Learning Centers	Title IV-B	\$2,500,000,000	Would not be authorized	Such sums
Innovative Programs (block grant)	Title V-A	\$600,000,000	Would not be authorized <sup>i</sup>	Would not be authorized <sup>i</sup>
Charter Schools	Title V-B-1	Such sums	\$300,000,000	Such sums
Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation	Title V-B-2	No authorization <sup>k</sup>	Would be authorized as part of the authorization for the Charter Schools program (see above)	Would be authorized as part of the authorization for the Charter Schools program (see above)
Voluntary Public School Choice	Title V-B-3	\$100,000,000	Would not be authorized	Would not be authorized
Magnet Schools	Title V-C	Such sums	\$91,647,000	Such sums

Current Law			H.R. 5, as Passed by the House, for FY2016 through FY2019 <sup>a</sup>	S. 1177, as passed by the Senate, for FY2016 through FY2021 <sup>b</sup>
Program	Statutory Citation for Program	FY2007 Authorization <sup>c</sup>		
Fund for the Improvement of Education <sup>l</sup>	Title V-D	\$675,000,000	Would not be authorized	Such sums (seven authorizations of appropriations) <sup>m</sup>
National Assessment of Educational Progress	na <sup>n</sup>	Such sums	Would not be authorized	Such sums
State Assessments	Title VI-A-1	Such sums	Would not be authorized	Such sums
Rural Education Achievement Program	Title VI-B	Such sums	Would receive 1.2% <sup>o</sup> (\$194,941,956) of a single authorization for programs serving special populations under Title I-A <sup>d</sup>	Such sums
Indian Education Grants to LEAs	Title VII-A-1	Such sums	\$105,921,000	Such sums
Indian Education Special Programs and National Activities	Title VII-A-2 and 3	Such sums	\$24,858,000	Such sums
Education for Native Hawaiians	Title VII-B	Such sums	\$34,181,000	Such sums
Alaska Native Education	Title VII-C	Such sums	\$33,185,000	Such sums
Impact Aid Federal Property	Title VIII, Section 8002	Such sums	\$66,813,000	Such sums
Impact Aid Basic Support Payments	Title VIII, Section 80003(b)	Such sums	\$1,151,233,000	Such sums
Impact Aid Children with Disabilities	Title VIII, Section 8003(d)	Such sums	\$48,316,000	Such sums
Impact Aid Construction	Title VIII, Section 8007	Such sums	\$17,406,000	Such sums
Impact Aid Facilities Maintenance	Title VIII, Section 8008	Such sums	\$4,835,000	Such sums
<b>New Authorizations of Appropriations Included in H.R. 5</b>				
Teacher and School Leader Flexible Grant	na	na	Would receive 25% (\$697,089,000) of a single authorization for teacher and principal programs under Title II <sup>f</sup>	na

Current Law			H.R. 5, as Passed by the House, for FY2016 through FY2019 <sup>a</sup>	S. 1177, as passed by the Senate, for FY2016 through FY2021 <sup>b</sup>
Program	Statutory Citation for Program	FY2007 Authorization <sup>c</sup>		
Family Engagement in Education	na	na	\$25,000,000	Such sums.
Local Academic Flexible Grant (block grant)	na	na	\$2,302,287,000	na
<b>New Authorizations of Appropriations Included in S. 1177</b>				
Improving Science, Technology, Engineering, and Mathematics (STEM) Instruction and Achievement	na	na	na	Such sums
Safe and Healthy Students: Grants to States and Local Educational Agencies (block grant)	na	na	na	Such sums
Family Engagement in Education	na	na	\$25,000,000	Such sums
Grants for Education Innovation and Research	na	na	na	Such sums
Innovative Technology Expands Children's Horizons (I-TECH)	na	na	na	Such sums <sup>b</sup>
Literacy and Arts Education	na	na	na	Such sums
Early Learning Alignment and Improvement Grants	na	na	na	Such sums
Native American and Alaska Native Language Immersion Schools and Programs	na	na	na	Such sums

**Source:** Table prepared by CRS, based on CRS analysis of the Elementary and Secondary Education Act (most recently amended by P.L. 107-110), H.R. 5, and S. 1177.

**Notes:** Proposed authorizations were aligned with authorizations included in current law if the proposed authorizations would authorize programs that are similar to those included in current law. It should be noted that the lack of a proposed authorization for a particular program does not necessarily mean that required or allowable activities under that program may no longer be supported. "Such sums" means "such sums as may be necessary." It should be noted that H.R. 5 would authorize appropriations for the McKinney-Vento Homeless Education program at \$65,042,000. S. 1177 provides an authorization of appropriations for this program of "such

sums as may be necessary.” The authorizations of appropriations for this program are not discussed in this report, as this program is not part of the ESEA.

na: Not applicable.

- a. The authorization of appropriations for FY 2016 through FY2019 would be the same each year for a given program not authorized under Title II. Similarly, the authorization of appropriation for FY2016 through FY2021 for programs authorized under Title II would be the same each year for a given program.
- b. The Innovative Technology Expands Children’s Horizons program does not have years specified for the authorization of appropriations. The program has a permanent authorization of appropriations.
- c. FY2007 was the last year for which ESEA programs had authorizations of appropriations included in statutory language. The General Education Provisions Act (GEPA) provided a one-year extension of ESEA program authorizations. GEPA provides that, “The authorization of appropriations for, or duration of, an applicable program shall be automatically extended for one additional fiscal year unless Congress, in the regular session that ends prior to the beginning of the terminal fiscal year of such authorization or duration, has passed legislation that becomes law and extends or repeals the authorization of such program” (20 U.S.C. 1226a). As Congress did not pass legislation to reauthorize the ESEA by the end of the 2005 calendar year, the program authorizations were automatically extended through FY2008. While appropriations for ESEA programs are no longer authorized, they continue to receive annual appropriations. This is considered an implicit authorization of appropriations for the programs.
- d. Under H.R. 5, five programs would share a single authorization of appropriations. These programs include Improving Basic Programs Operated by LEAs, Migrant Education, Neglected and Delinquent, English Language Acquisition, and Rural Education. The total authorization of appropriations for each year from FY2016 through FY2019 would be for \$16,245,163,000. Each of the five programs would receive a share of the overall, single authorization. The individual shares are noted in the table.
- e. S. 1177 includes a specific authorization of appropriations for conducting evaluations of Title I programs (Section 1002(e)) and for the Literacy Education for All, Results for the Nation (Section 2003(e)), which is similar to the current Striving Readers program. Both the evaluation of Title I programs and the Striving Readers program currently share a single authorization of appropriations under current law.
- f. Under H.R. 5, the Teacher Quality State Grants program and the Teacher Preparation and Effectiveness program would share a single authorization. The total authorization for each fiscal year for FY2016 through FY2019 would be \$2,788,356,000.
- g. Title IX of H.R. 5 would authorize the Schools of the Future Act, which would support technology-based learning. This program would not be part of the ESEA. The act, however, does not appear to include an authorization of appropriations.
- h. S. 1177 would create a new program focused on education technology.
- i. H.R. 5 would provide an authorization of appropriations for a new block grant program.
- j. S. 1177 would provide an authorization of appropriations for a new block grant program.
- k. The Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation program had a separate authorization for FY2002 and FY2003 only. It has continued to receive appropriations each fiscal year.
- l. Under current law, a single authorization under Title V-D covers programs included in Title V-D-1 through Title V-D-21. Title V-D-1 provides the Secretary with the authority to support “nationally significant programs.”
- m. Under current law, a single authorization under Title V-D covers programs included in Title V-D-1 through Title V-D-21. S. 1177 would retain seven programs currently authorized under Title V-D and provide each program with its own authorization of appropriations: (1) Teacher Incentive Fund (Section 2003(c)); (2) Presidential and Congressional Academies for American History and Civics (Section 2003(d), which would share an authorization of appropriations with the Teacher of Traditional American History program; (3) Elementary and Secondary School Counseling (Section 4301(h)); (4) Physical Education Program (Section 4407); (5) Javits Gifted and Talented Education program (Section 5307); (6) Full-Service Community Schools (Section 5918); and (7) Promise Neighborhoods (Section 5930).
- n. NAEP is not an ESEA program; rather, it is authorized under the National Assessment of Educational Progress Authorization Act. However, as participation in NAEP is a requirement for states to receive

- funding under ESEA Title I-A if the Secretary pays for the test administration, current law included an authorization of funds for NAEP. H.R. 5, while still requiring states to participate in NAEP if the Secretary pays for the test administration in order to receive funds under Title I-A-I, does not include an authorization of funds for NAEP. S. 1177 would include an authorization of appropriations for NAEP.
- o. The Small, Rural School Achievement Program would receive 0.6% (\$97,470,978) of the total amount authorized for Title I-A. The Rural and Low-Income School Program would also receive 0.6% (\$97,470,978) of the total amount authorized for Title I-A. Under current law, appropriations provided for rural education are divided evenly between these two programs per Section 6234.

## **Non-ESEA Provisions Included in H.R. 5 and S. 1177**

Both H.R. 5 and S. 1177 would include non-ESEA provisions that would affect existing laws or programs, create new programs, and add non-funding related provisions to law. Below is a brief overview of these provisions.

### **H.R. 5**

Title VII would amend provisions of the McKinney-Vento Homeless Assistance Act related to the Education for Homeless Children and Youths program. It would authorize appropriations for the program for FY2016 through FY2019 at \$65,042,000 each year.

Title VIII (Miscellaneous Provisions) would enact a variety of provisions addressing disparate issues. Title VIII includes the following:

- A sense of Congress related to school staff suspected of or proven to have committed sexual misconduct.
- A provision preventing the improper use of taxpayer funds with respect to grants and subgrants made under the ESEA.
- A provision requiring ED to conduct monitoring and oversight of the use of ESEA funds by grantees and subgrantees.
- A prohibition on the use of ESEA funds for excess payments to certain retirement or pension systems.
- A sense of Congress related to the free exercise of religion on elementary and secondary school grounds.

Title IX would authorize the Schools of the Future Act, which would provide competitive grants to eligible partnerships to support technology-based learning. No authorization of appropriations was included for the program.

### **S. 1177**

Title X-A would amend provisions of the McKinney-Vento Homeless Assistance Act related to the Education for Homeless Children and Youths program. It would authorize appropriations for the program for FY2016 through FY2021 at “such sums as may be necessary.”

Title X-B would include several provisions addressing a variety of issues. Title X-B includes the following:

- A provision providing guidance related to the use of the term “highly qualified” in other laws.<sup>51</sup>
- A provision requiring the identification of the number of ED staff who worked on or administered each program and project authorized under the ESEA prior to the enactment of S. 1177 and the number of full-time equivalent employees who work on or administer programs or projects that would be eliminated by S. 1177.
- A provision requiring a report on ED actions in response to two Inspector General reports on charter schools.
- A provision requiring a Comptroller General study on increasing the effectiveness of services and programs intended to benefit children.
- The posthumous pardon for John Arthur “Jack” Johnson to expunge a “racially-motivated abuse of prosecutorial authority” of the federal government and in recognition of his “athletic and cultural contributions ... to society.”
- The reauthorization of the Education Flexibility Partnership Act of 1999, which authorizes an SEA to waive eligible statutory or regulatory requirements applicable to specified programs for any LEA, educational service agency, or school in the state.

Title X-C would enact the American Dream Account Act, which would create a personal online account for low-income students that monitors higher education readiness and includes a college savings account. The program would be authorized at “such sums as may be necessary” for FY2016 through FY2020. Title X-C would also authorize a report on Native American language medium education.

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<sup>51</sup> H.R. 5 would include a provision related to this issue in ESEA Title IX.