



National Association of Federally Impacted Schools

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Questions and Answers

H.R. 5199, The Education Savings Accounts for Military Families Act

BACKGROUND:

Impact Aid, one of the oldest Federal education programs, provides funds to more than 1,100 local educational agencies (LEAs) that have lost property tax revenue due to the presence of tax-exempt Federal property or that educate federally connected children (i.e. military connected children, children who reside on Indian lands, children who reside in Federal low-rent housing, and children whose parents work on Federal property). These LEAs are at a unique disadvantage because they must provide an education to all students while typically operating with less local revenue than is available to other LEAs because the Federal government is impacting their ability to generate revenue from property taxes, sales taxes, and other revenue streams. Impact Aid helps make up the difference, essentially taking the place of local funds for education. Most Impact Aid funding is used for general operating expenses that enable an LEA to function on a day-to-day basis, such as teacher salaries, technology, academic materials, afterschool programs, student transportation, building maintenance, and utilities. For federally impacted LEAs that serve military connected children, Impact Aid funds are also used to support the unique needs of this population.

The Education Savings Accounts for Military Families Act of 2018 (H.R. 5199) would use Section 7003 Impact Aid Basic Support funds to allow active-duty military parents to establish Education Savings Accounts (ESAs), a form of private school voucher, for their children.

Are Impact Aid funds an appropriate way to pay for ESAs?

No. Fundamentally, the bill ignores and undermines the Federal government's responsibility to provide funds to LEAs whose ability to generate local revenue is limited by the presence of nontaxable Federal property. Impact Aid Section 7003 Basic Support Payments reimburse LEAs for lost local tax revenue to cover the costs of educating all students in the school district. These payments take the place of revenues the LEA would otherwise generate through property, income, and sales taxes that are used for basic operating expenses. LEAs with large populations of military families rely heavily on Impact Aid funding because frequently military families do not pay State or local income taxes where they physically live by declaring residency in their home State. They also may not contribute much to sales taxes, for example, by opting to shop at the commissary, which also hinders revenue growth for the district. A school's basic operating expenses (for facilities, personnel, programs, and materials, etc.) must be met even if a family were to take a child out of the local public school (on a full- or part-time basis) and instead use an ESA.

Although Federal funding comprises less than ten percent of overall education funding, Impact Aid is a significant budget stream for some LEAs. For example, Impact Aid may comprise upwards of 40 of the budget for LEAs located primarily or completely on Federal property. Reducing funds to impacted LEAs by even one percent could hinder an LEA's ability to operate and provide a high-quality education for all of its students.

THE NAFIS FAMILY

MISA

Military Impacted
Schools Association

NIISA

National Indian Impacted
Schools Association

FLISA

Federal Lands Impacted
Schools Association

MTLLS

Mid-to-Low-LOT
Schools

How much would ESAs cost the Impact Aid program?

ESAs could take up to \$450 million per year from existing Impact Aid Section 7003 Basic Support Payments, which provide funds to local school districts that educate federally connected children. In order to administer this program, the U.S. Department of Education (ED) would likely have to delay and reduce payments to all eligible LEAs by the amount needed to make contributions to ESAs. Therefore, it is likely that all school districts that receive Basic Support Payments would see a reduction in funding regardless of whether or not they educate military students.

The cost of \$450 million is the estimated total that could be used by students currently enrolled in private school or being homeschooled, children ages 0-4, and children ages 19-21, all of which would be eligible for ESAs under the bill. Because these categories of students are either already opting out of the public school system or not in the public school system, it is highly likely that most of these families would choose to receive an ESA.

What are allowable uses for the ESAs?

This bill would provide for an unprecedented expansion of the purpose of the Impact Aid program and the uses of Impact Aid funds. ESAs could be used for a wide variety of purposes, including higher education expenses and college savings accounts. The eligible services and activities authorized under the bill include: (1) paying the costs of attendance at a State-recognized private school; (2) private online learning programs; (3) private tutoring; (4) services provided by a public elementary or secondary school on a less-than-full-time basis; (5) textbooks, curriculum programs, or other instructional materials; (6) purchase of computer hardware or other technological devices every 18 months; (7) educational software and applications; (8) private school uniforms; (9) fees for nationally standardized assessments, as well as test-prep fees for those assessments; (10) fees for summer education programs and after-school programs; (11) educational services and therapies; (12) fees for transportation to the facilities of an educational service provider; (13) the costs of attendance at an institution of higher education; (14) costs associated with an apprenticeship or other vocational training program; (15) fees for State-recognized industry certification exams as well as test prep for those exams; (16) contributions to Section 529 college savings accounts; and (17) any other educational expenses approved by ED.

A student who receives an ESA could not be enrolled in a public elementary school or secondary school on a full-time basis. The parent of such student would be required to provide the eligible child with instruction in, at a minimum, reading, language, math, science, and social studies. Moreover, a student receiving an ESA could not attend a public school on a less-than-half-time basis free of charge.

What is a Heavily Impacted LEA?

In order to qualify for "Heavily Impacted" payments, an LEA must meet a percentage threshold of federally connected students, have a per-pupil expenditure that is below the State or national level, and have a tax rate that is at least 95 percent of the State average. Essentially, taxpayers in these LEAs agree to impose a high tax rate on their community to support the education of both local and federally connected students. In Fiscal Year 2016 (the most recent year for which payments have been finalized), there were only 22 Heavily Impacted LEAs that educated military connected students. Seven of these LEAs share a boundary with a military installation and therefore have minimal or no taxing authority. (These coterminous LEAs do not need to meet the other Heavily Impacted criteria). The number of Heavily Impacted LEAs shifts over time because an LEA must meet the criteria each year to be eligible. Therefore, one year a

student could be eligible for a \$4,500 ESA and the next year eligible for no ESA if the LEA loses its Heavily Impacted designation and the family lives off the installation.

How are the amount of funds determined for the two ESA categories and will the amount of the ESA be consistent throughout a student's K-12 education?

In the first year of the program, a child with a parent on active duty who resides within the boundary of a "heavily impacted" LEA (as defined in the Impact Aid program) would be eligible to receive an ESA of \$4,500. A child with a parent on active duty who resides on a military installation in a non-heavily impacted LEA would be eligible for an ESA of \$2,500. These amounts would be adjusted upward for inflation in the ensuing years.

As military families are reassigned, the ESA that the family is eligible for will change. These arbitrary amounts and location-based requirements bear no relationship to the amount that an LEA would receive for that same student under Impact Aid; nor do they recognize the mobility limitations that military families face or housing options they may choose. Under the Impact Aid program, an LEA's payment depends on the characteristics of the State, the LEA (including the percentage of an LEA's budget that is comprised of Impact Aid), the category and number of federally connected students served, and, in some cases, local tax effort.

What happens if ESA funds are not fully used in a year, and how long could such an account remain open?

Unused funds in an ESA could be rolled over into the next year. This bill would allow a student with an ESA to hold the money in an account for up to four years without using it for any education services, continuously rolling it over. In the meantime, other students attending Impact Aid LEAs would receive fewer services while the funds they would have otherwise benefitted from are sitting in an account and gaining interest for an individual.

How would LEAs currently receiving Impact Aid funds be impacted if students currently attending those LEAs opt for an ESA?

Claims that Impact Aid recipient LEAs would have lower variable costs if they no longer educate a child using an ESA are flawed. Because Impact Aid funds are used for general operating expenses, unless a significant number of students at the same grade level or in the same classroom were to opt for an ESA (making it possible for the district to adjust costs for that cohort of students), expenses would remain largely the same. However, if a child uses an ESA, the LEA is impacted by the loss of funds with no recourse to generate local revenue. In addition, these LEAs could see Federal funds reduced. They would also receive less enrollment-based State aid.

Will this bill harm LEAs educating American Indian and other federally connected students?

Yes. Claims that Native American students would not be harmed by this legislation because they are funded through a different part of the program are highly questionable. Although the bill specifies that the Impact Aid funds that are used for ESAs must only be those funds that would otherwise be made available for the education of military connected children, in practice it would be either infeasible or unreasonably cumbersome to separate the military portion of funds from those that support the education of other categories of eligible children, such as Native American students. **Categories of school districts and federally connected children are not separated out within the Basic Support program.** The various elements of the Impact Aid payment system (such as the Learning Opportunity Threshold) make it even more difficult to separate out the funds for military connected children. Plus, there are some LEAs that

educate both military connected students and students who live on Indian lands. Thus, it is not clear that ED would be able to only draw funds for military children rather than taking the money straight off the top of the Basic Support Payments program and reducing funding for LEAs with children living on Indian lands and other categories. Therefore, all LEAs that receive Basic Support Payments would likely receive reduced payments.

How will this bill impact students who are educated at schools on military installations?

Claims that children who are currently educated on military installations would not be impacted by this bill are false. These claimants are likely confusing the approximately 150 school facilities on military installations operated by LEAs with schools operated by the Department of Defense (DOD). Funding for DOD schools would not be impacted by this bill, as they are funded through DOD. However, most of the LEAs in which these schools on installations are located receive Impact Aid and would therefore receive reduced payments, just as other Impact Aid LEAs would.

What accountability measures would be in place to protect taxpayer dollars and families who opt for an ESA?

The bill would allow private entities to receive ESA funds with no consideration of the quality of services such entities have provided in the past and no accountability for academic achievement. In fact, the Federal government and States would be expressly prohibited from exercising control or supervision over educational service providers. ED would be responsible only for monitoring for fraud and for obtaining refunds in cases of fraud or nonperformance.

Will students using an ESA be covered by the Military Interstate Compact?

No. The Interstate Compact on Educational Opportunity for Military Children is an agreement among States that was established to address issues relating to enrollment, placement, attendance, eligibility, and graduation for military families due to frequent moves and deployments. The Compact, adopted by State legislatures in all 50 States and DC, does not extend to non-public schools and therefore students whose families choose to participate in the ESA would not be protected or covered by the Compact.

Will this bill significantly increase ED's administrative burden and bureaucratic footprint?

Yes. The ESA would be administered by ED, which would be responsible for, among other things: (1) receiving, reviewing, and approving applications for ESAs on a year-round basis, including entering into and maintaining written agreements with individual families; (2) creating a standardized ESA application form; (3) determining if students receiving ESAs are receiving instruction in reading, language, math, science, and social studies; (4) determining the eligibility of applicants, including verifying the student's residential address and the parent's military status; (5) recalculating the Impact Aid formulas and making quarterly ESA payments; (6) regulating, as necessary, on the allowable uses of ESAs, and deciding what additional educational services, beyond those specified in the legislation, are allowable; (7) tracking a student's use of an ESA over a period of years (potentially as many as 26 for students with disabilities) and ensuring students spend the money within allotted time frames and that they are not enrolled in a public school; (8) establishing and implementing procedures for the annual renewal of ESAs; (9) ensuring educational service providers are following Federal privacy laws so individual student data collected by this program is not compromised; (10) ensuring that families use ESAs only for authorized purposes, potentially by auditing receipts for every single expense; (11) recovering unused ESA funds; (12) setting up a fraud prevention website and

hotline; (13) ensuring that educational service providers post surety bonds and determining when such bonds must be retained by ED; (14) conducting general programmatic oversight; and (15) establishing and implementing a system for the recovery of funds from providers in cases of fraud or nonperformance.

These new responsibilities would require significant resources in addition to all of the complicated tasks the current Impact Aid program requires. The biggest administrative burden ED would have to undertake is to establish and maintain separate relationships with each participating family. This would all be extremely labor-intensive and increase, rather than reduce, the Federal bureaucracy. Impact Aid program administration would become more complicated. The bill is vague on how funds would be reduced from the Basic Support program to fund ESAs. ED would have to delay and possibly reduce payments on a rolling basis over the course of the year (in order to meet the statutory requirement to conduct a year-round ESA application process), while recalculating LEA allocations under the program. This would cause an unprecedented level of budget uncertainty for the more than 1,100 eligible LEAs. Overall, federally impacted LEAs would no longer have a stable source of funding on which to rely, complicating their already limited ability to fund schools due to the presence of tax-exempt Federal property.

Does this bill infringe on State and local education authority?

Yes. The bill federalizes ESAs, pre-empting those States that have chosen not to implement an ESA within their State. The bill imposes several limitations and requirements on State and local authority over education. First, it dictates State compulsory attendance requirements, requiring that a State in which a child receives ESA funds must consider the child as meeting the State's compulsory school attendance requirements for a school year. Second, the bill dictates part-time enrollment requirements in public schools (should a State even have such requirements), requiring an LEA to charge a child using an ESA to enroll part time to attend, even if the ESA does not cover the cost of attendance, or force a LEA to cover educational expenses for a part-time student that far exceed the cost of the ESA. Third, the bill expressly prohibits States from exercising control or supervision over educational service providers, including that such providers would not be required to adhere to any Federal Civil Rights laws. Lastly, the bill requires public schools and institutions of higher education to post bonds if they receive ESA funds from families.

Will this bill burden taxpayers?

Yes. Federally impacted communities are subsidizing the Federal government's tax bill, because of underfunding of the Impact Aid program, by more than \$1 billion. Taxpayers living in these communities often pay higher-than-average taxes compared to communities in the State that are not federally impacted because the taxable property and number of taxpayers are limited. As dollars are drained from the Impact Aid program and diverted to ESAs and fewer resources are available to federally impacted LEAs, taxpayers will have to increase their tax burden or educational staffing, programming, and services will be reduced.

What is the difference between ESAs funded with Impact Aid and GI Bill benefits?

The Post-9/11 GI Bill is an earned benefit for service members and veterans to provide financial assistance for post-secondary education and training to assist with their transition to civilian life. Tuition is paid to the institution (not the individual), which must meet rigorous accountability standards including State and Federal accreditation requirements, as well as State

Approving Agency approvals. Further, Title IV in the Higher Education Act protections also apply to GI Bill benefits.

In contrast, the purpose of Impact Aid is to provide funds to LEAs whose budgets have been impacted by the presence of nontaxable Federal property. Funds are intended to support the education of all students, not provide an individual benefit. Comparisons between Impact Aid funded ESAs and GI Bill benefits are misguided.

What did the Military Times poll so frequently referenced to justify this bill say about educational choice for military families?

Much of the assumption of military family support by advocates for H.R. 5199 is based on an informal poll of *Military Times* readers. The Collaborative for Student Success sponsored the survey and has stated that supporters of using Impact Aid for a military voucher are “misusing the findings of our small informal survey. . . Our voluntary survey was NOT a representative sample and did NOT ask service members whether they support removing funds from public schools to create a Federal ‘school choice’ program.” The survey reached only 101 active-duty service members.

Do organizations representing service members, veterans, and their families support this legislation?

No. Twenty-six military and veteran serving organizations that comprise The Military Coalition, including the Association of the United States Army, Association of the United States Navy, Military Officers Association of America, and National Military Family Association, oppose the legislation. The Military Child Education Coalition also opposes the legislation. These organizations, representing more than 5.5 million current and former service members and their families and survivors, are concerned about diverting resources from LEAs that educate and support the unique academic and social-emotional needs of a majority of military connected students.

Has anyone in the Administration publicly supported this bill?

No. The Secretary of Education, in a 2018 Conservative Political Action Conference speech, supported the use of ESAs for military connected children. However, she did not reference support for this bill or the use of Impact Aid to fund military ESAs in those or any other public remarks.

Is the Defense Authorization an appropriate vehicle to advance this legislation?

No. The concept of using Impact Aid funds to establish ESAs for military connected children, as proposed under this bill, is a contentious issue and the Defense Authorization process has historically been bipartisan. Further, Impact Aid is not in the jurisdiction of the House and Senate Armed Services Committees which are responsible for the Defense Authorization.

While changes to the Impact Aid program have been advanced on the Defense Authorization, they have required bipartisan and bicameral support, including the clearance of the committees of jurisdiction: the Senate Health, Education, Labor and Pensions Committee and the House Education and the Workforce Committee. Major, controversial policy changes that would have such a negative financial impact on the program, like the policy this bill contemplates, should be debated in the context of the Elementary and Secondary Education Act.