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DEPARTMENT OF EDUCATION

ED-2021-OESE-0115

Request for Information Regarding the Implementation of Maintenance of Equity Provisions in the American Rescue Plan Act of 2021

AGENCY: Office of Elementary and Secondary Education, U.S. Department of Education.

ACTION: Request for information.

SUMMARY: The U.S. Department of Education (Department) is requesting information in the form of written comments regarding implementation of the statutory requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund, under the American Rescue Plan (ARP) Act of 2021, that each State educational agency (SEA) and each local educational agency (LEA) that receives ARP ESSER funds maintain equity. Information received through this request may be used to assist the Department in preparing further guidance, providing

technical assistance, engaging in potential rulemaking, and developing other resources.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your response to this request for information (RFI) through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

Postal Mail, Commercial Delivery, or Hand Delivery:  
If you mail or deliver your comments in response to the request for information, address them to U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W113, Washington, DC 20202. Mailed comments must be postmarked by [INSERT

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], to be accepted.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

This is a request for information only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, we are not seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT: Britt Jung, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone: (202) 453-5563. Email: [ESSERF@ed.gov](mailto:ESSERF@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background: The ARP Act provides a total of nearly \$122 billion via the ARP ESSER Fund to SEAs and LEAs to help schools return safely to in-person instruction; sustain the safe operation of schools; and address the social, emotional, mental health, and academic impacts of the COVID-19 pandemic on the Nation's students.

Section 2004 of the ARP Act includes maintenance of equity (MOEquity) provisions that are a condition for an SEA and LEA to receive funds under the ARP ESSER Fund. Under section 2004(b) of the ARP Act, the MOEquity provisions ensure that an SEA does not disproportionately reduce State funding in fiscal years (FYs) 2022 and 2023 for LEAs serving a large share of students from low-income families and, for the highest-poverty LEAs, does not decrease State funding below their FY 2019 level. Similarly, under section 2004(c) of the ARP Act, the MOEquity provisions ensure that each LEA safeguards its high-poverty schools from disproportionate reductions to funding and staffing.

On June 9, 2021, the Department published Frequently Asked Questions on the MOEquity requirements (which the Department updated on August 6, 2021),<sup>1</sup> providing detailed guidance on how each SEA and LEA can comply with the MOEquity provisions.

Since issuing the guidance, the Department has continued to engage with a wide array of stakeholders to understand the opportunities and challenges related to MOEquity implementation within the context of the coronavirus disease 2019 (COVID-19) pandemic. The Department is eager to learn from the experiences and perspectives of SEAs, LEAs, and other stakeholders. We are, therefore, issuing this RFI to invite public comment on a range of MOEquity implementation questions. At the same time, the Department is publishing a Notice of Proposed Requirements (NPR) that would require each SEA to make publicly available information on how each LEA in the State is maintaining fiscal and staffing equity to ensure public transparency and accountability for the implementation of the MOEquity provisions.

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<sup>1</sup> See [https://oese.ed.gov/files/2021/08/Maintenance-of-Equity-updated-FAQs\\_final\\_08.06.2021.pdf](https://oese.ed.gov/files/2021/08/Maintenance-of-Equity-updated-FAQs_final_08.06.2021.pdf). (Maintenance of Equity Frequently Asked Questions)

Invitation to Comment: The Department is committed to supporting SEAs and LEAs in implementing the ARP Act MOEquity provisions with fidelity to the law. The Department recognizes that each State's education finance system is unique and that additional guidance may be needed regarding how to apply the MOEquity requirements with fidelity in the context of specific and varied State circumstances.

To help inform its support for SEAs and LEAs in implementing the MOEquity provisions, the Department is seeking input from the public. The Department is interested in responses to the specific questions below, as well as additional information and perspectives on MOEquity implementation. Because this RFI is intended to inform further guidance and any potential rulemaking, the Department does not anticipate responding to each comment received. When responding to this RFI, please address one or more of the following questions:

1. The Department is aware that each State's K-12 education funding system is unique and that State-specific considerations may impact how an SEA implements MOEquity requirements in a manner that is both meaningful and meets the technical requirements of the ARP Act. What types of State-specific

considerations (e.g., funding mechanisms, definitions of revenue sources, etc.) are relevant to the implementation of the State and local MOEquity provisions? What types of barriers exist to implementing the MOEquity provisions due to the State-specific approach to education funding? How might guidance or potential rulemaking account for unique State education finance systems so that State MOEquity implementation will be consistent with the goal of maintaining equity?

2. The Department recognizes that LEAs with small enrollments may exhibit greater annual variation in per-pupil funding and other calculations based primarily on their size. How might this issue be addressed to ensure the small size of an LEA does not render year-over-year comparisons unreliable, so that State MOEquity implementation will be consistent with the goal of maintaining equity?
3. MOEquity requires comparisons of "per-pupil funding." Please identify any considerations that are relevant to implementation related to enrollment data and funding sources used in determining per-pupil funding. Are there safeguards that should be considered to ensure that State-specific enrollment methodologies do

not distort per-pupil funding levels (e.g., the use of hold harmless provisions or rolling averages)? Since MOEquity calculations are important to inform budget allocation decisions, what data are SEAs and LEAs most likely to have available and rely on for conducting initial MOEquity calculations?

4. LEAs may be exempted from MOEquity requirements per the ARP Act based on "exceptional or uncontrollable circumstance[s]." What factors should the Department be aware of related to the types of exceptional or uncontrollable circumstances, both specific to FY 2022 implementation and, more generally, to ensure that such exceptions do not contradict the intent of the law and are consistent with the goal of maintaining equity?
5. The purpose of the MOEquity provisions is to ensure that schools and LEAs serving large proportions of underserved groups of students--including students from low-income families, students of color, English learners, students with disabilities, and students experiencing homelessness--receive an equitable share of State and local funds as the Nation continues to respond to the COVID-19 pandemic's impact. In light of this purpose, what other information or related

issues should the Department consider to ensure that the purpose of the MOEquity provisions are achieved?

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Dated:

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Ian Rosenblum,  
*Deputy Assistant Secretary for  
Policy and Programs  
Delegated the Authority to Perform  
the Functions and Duties of the  
Assistant Secretary for Elementary  
and Secondary Education.*