LEGISLATION
MAINTENANCE OF EQUITY PROVISIONS IN ARP
November 4, 2021

Docket ID ED-2021-OESE-0116

Comments on Proposed Requirement – American Rescue Plan and Elementary and Secondary School Emergency Relief Fund

U.S Department of Education
400 Maryland Avenue, SW, Room 3W113
Washington D.C. 20202

Attention: Britt Jung

The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, submits comments in opposition to the Education Department’s proposed requirements published in the October 5, 2021, Federal Register requiring data collection and publication of massive amounts of school district and school-level expenditure and staffing data. Much of this data is not currently available, collected, or aggregated for a large segment of the nation’s schools and school districts. Moreover, the U.S. Department of Education fails to cite any statutory basis authorizing this mandatory data collection and state-level publication of school expenditure and staffing information -- in contrast to ESEA section 1111(h), for example, which enumerates specific requirements for state and local data reporting and dissemination.

The Council appreciates the Department’s outreach and its updating of the maintenance of equity (MOEquity) guidance on August 6, 2021, since the American Rescue Plan (ARP) provisions and legislative history did not fully take into account the variations in school funding systems across the nation. The Department’s exemption/exception for districts not experiencing per pupil expenditure reductions in school year 2021-22 recognizes that ARP section 2004(c) was designed to address circumstances in which state and local revenues for schools were reduced and to prohibit disproportionate cuts to high-poverty schools in those districts. The updated guidance should be extended through school year 2022-23 and this unnecessary NPR should be withdrawn.

Similar data to the proposed collection in the NPR is already collected under the Civil Rights Data Collection (CRDC) initiative of the Office of Civil Rights, annual State Performance Reports, and ESEA State and Local Report Cards. This new requirement would layer on additional state and local information collection --ostensibly under the ARP although actually based on “the Department’s policy goals” (see Federal Register Vol 86, No. 190, page 54884) without any basis in the ARP Act to do so. In the alternative to this massive proposed data collection, the Department could convene a practitioner’s group to better understand the requirement’s local impact or issue a contract to sample several states and a representative group of school districts and schools in order to review the effects of the MOEquity provisions.
The Council notes the significant challenges that school districts are facing in returning to in-person instruction after lengthy pandemic-related closures. The need to remain focused on instruction and support services for students and on safety protocols for adults and children on our campuses is paramount. Diverting time, attention, and resources to administratively created federal data collection and publication directives is unnecessary and counterproductive. Well documented staffing shortages and supply chain problems across the nation’s school districts have required redeployment of staff among schools thereby further complicating district operations and return-to-school activities.

Incomplete and Inadequate Justifications for the NPR.
The Department’s stated justifications for these proposed data collection and publication requirements are unavailing. The Department suggests that the data collection and public posting of voluminous school-by-school expenditure and staff information is necessary “so that parents and families will be able to access publicly available information on how each LEA in the State is maintaining fiscal and staffing equity.” Yet only an infinitesimal proportion of parents and families will ever access the proposed state database or even differentiate this information from multiple other data indicators that similarly are reported publicly. The Council disagrees with the Department suggestion that the burdens for schools, school districts, and state agencies are “far outweigh[ed]” by the benefit to the general public to access to the proposed state-level database.

The Department’s further justification for the NPR based on “accountability” also comes up short. True accountability is based on outcomes, which will not be adequately determined until the end of each of the three ESSER program years and not by the proposed data collection deadline date of December 31, 2021. Additionally, it should be noted that there is no requirement or any certainty that every school subject to the state and local MOEquity provisions will receive an allocation of these emergency ARP funds and have any specific ESSER-based outcomes to assess -- despite being potentially subject to this nationwide school-level data collection requirement.

Insufficient Background Leads to Questionable Cost Assumptions in the NPR.
The NPR cost assumptions totaling a mere $60,000 over two years for this national data collection and publication requirement across every state and possibly every school district and school appears to be massively understated and troublingly uninformed. The stated assumption that SEAs and LEAs already collect this information is simply wrong, and the NPR even acknowledges that such assumptions may be incorrect (Federal Register Vol 86, No. 190, pages 54885). In fact, the Department further acknowledges its dearth of knowledge on the wide variations in school finance and funding mechanisms in its concurrent Request for Information (Federal Register Vol 86, No. 190, pages 54881-3) that seeks “additional information and perspectives on MOEquity implementation.”

The Department issued its August 6, 2021, updated guidance after recognizing that its initial June 9, 2021, guidance was unworkable. The Council commends the Department for its outreach to school districts and addressing the problems with initial guidance and the widespread noncompliance that would likely result. The Council suggests that the Department should not be proposing new requirements in this NPR when clearly it not sufficiently informed to date of the full scope of this complex and multivariant issue.
The Council further notes an ongoing uncertainty whether the currently exempt LEAs and schools under the August 6 guidance will continue to be exempt from the data collection and public posting [see Proposed Requirement (a)(1) and (2)] in either the final requirements resulting from this NPR for the current school year 2021-22 or in subsequent guidance for school year 2022-23.

**Department Policy Reversal on the Publication of MOEquity Data.**

In the August 6, 2021, MOEquity guidance the Department encourages SEAs and LEAs to make MOEquity data publicly available” (see FAQ #34). Two months later in this NPR, however, the Department now would mandate that MOEquity data be publicly posted without explaining the reason for Department’s policy reversal.

**Additional Inquiry into Collection of Other Demographic Information Is Misplaced.**

In multiple instances in the NPR and RFI, the Department references the need for regulatory input on other demographic information to be collected and publicly posted in conjunction with MOEquity – including race and ethnicity, disability, multiple language learners, migrants, and homeless students. The Council notes that the MOEquity provisions of the ARP Act solely address low-income status and no other demographic factors. Hence, the Department’s inquiry about collecting and posting additional demographic information from schools, districts, or states is misplaced and unwarranted – however well-intended.

**Weighted Student Allocation Formulas Can Trigger MOEquity Violations.**

The Council wants the Department to understand that most of the Great City Schools currently utilize “weighted student allocation” systems to distribute some portion of school-level funds in addition to establishing staffing levels by taking into account concentrations of high-need students (e.g., students with disabilities, English learners, migrant students, homeless students, etc.). However, weighted student allocation systems – despite being credited with expanding equity – can trigger violations of the ARP MOEquity provisions in instances where declining enrollments of highly-weighted students in a particular year will result in a disproportionate reduction in the school-level per pupil expenditures or in FTE staffing dedicated to the declining high-need student population.

**In Summary.**

In the concurrent Request for Information, the Department acknowledges its expectation of further guidance and possibly new rulemaking for MOEquity implementation. The Council believes further guidance and rulemaking would be unproductive and cites the past attempts to create some form of nationwide mathematical formulation to produce financial equity among K-12 schools as repeatedly unworkable -- including recent efforts to rewrite Title I comparability requirements and reinterpret supplement-not-supplant requirements. Extending the current guidance and exemptions along with withdrawing the proposed data collection and publication requirements of the NRP is the best course of action.
**Recommendations:**

The Council recommends withdrawal of the Notice of Proposed Requirements, and an extension of the August 6, 2021, updated guidance with the exemptions/exceptions through school year 2022-23.

The Council further recommends that if the Department determines a need for school-level information on the Maintenance of Equity provisions of the ARP, then a contract could be issued for a sample of states and a representative group of school districts and schools to review the effects of the MOEquity provisions.

Please let me know if there are questions regarding these comments at

Sincerely,

Raymond Hart  
Executive Director
November 4, 2021

**Docket ID ED-2021-OESE-0115**

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

U.S. Department of Education  
400 Maryland Avenue, SW, Room 3W113  
Washington D.C. 20202

Attention: Britt Jung

The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, submits comments regarding Maintenance of Equity (MOEquity) Implementation issues and challenges based on the Education Department’s Request for Information (RFI) published in the October 5, 2021 Federal Register. These comments are submitted in the conjunction with the Council’s comments on the October 5, 2021 MOEquity Notice of Proposed Requirements (NPR).

The Council appreciates the Department’s outreach and its update of the maintenance of equity (MOEquity) guidance on August 6, 2021 -- particularly since the American Rescue Plan (ARP) provisions and legislative history did not fully take into account the many variations in school funding systems across the nation. The Department’s exemption/exception for districts not experiencing per pupil expenditure reductions in school year 2021-22 recognizes that ARP section 2004(c) was designed to address circumstances in which state and local revenues for schools were reduced and to prohibit disproportionate cuts to high-poverty schools in those districts. Without the August 6 revision to the MOEquity guidance there would have been widespread noncompliance across tens of thousands of schools triggering the need for a comparable volume of exceptions to be considered by the Secretary of Education. The updated guidance is sufficiently crafted to need minimal revision and should be extended through school year 2022-23.

As highlighted in our MOEquity NPR comments, the Council believes further guidance and rulemaking would be unproductive, citing the past futile attempts to create some form of nationwide mathematical formulation to produce financial equity among K-12 schools -- including recent efforts to rewrite Title I comparability requirements and reinterpret supplement-not-supplant requirements.

In previous stakeholder consultations with the Education Department, the Council underscored the plethora of problems that the initial guidance did not take into account. The RFI references some of the funding mechanisms and methodologies that could trigger MOEquity noncompliance despite facilitating equitable funding distribution. The Council contends that it is not reasonable to expect any nationwide standard for K-12 financing to accommodate all the multiple and varying systems for allocating school funding and deploying staff.
The Council highlighted a few examples of these varying factors that did not align with original Department MOEquity guidance including:

- enrollment variations before and during school closure and hybrid/remote options compared to current enrollment patterns, including significant declining enrollments generally and in specific age groups
- fluctuations in special population enrollment (SWD, ELL, etc.) triggering changes in the amounts of weighted per pupil allocations received by individual schools as well as allocation formulas for specialized staff
- Prior year hold harmless allocations at state and local level (regardless of enrollment shifts) that are later discontinued
- LEAs with significant school-based budgeting and staffing authority
- LEAs that exclude food, transportation, custodial and other costs from school level reporting
- Current staffing shortages, unfilled positions, and emergency redeployment of staff
- Disproportionate effects in small schools
- One-time major investments in prior years, such as technology acquisitions or safety upgrades, compared to current expenditures
- Retirements of older and higher paid staff

In the final iteration of the ARP MOEquity legislative provisions, the need for exceptions and flexibility was recognized by including section 2004(c)(2). The Council believes that further efforts to refine the updated MOEquity guidance are not needed and could cause further disruption to local school district efforts to restart and maintain in-person instruction and support services amid significant staffing shortages and supply chain gaps. Other efforts during the past decade to micromanage school finances and staffing from the federal level have proven unworkable and were not adopted.

The Council recommends that the Department make as few revisions as possible to the current MOEquity guidance in order to help stabilize K-12 public school services and allow school districts to address the unanticipated challenges that return to in-person schooling has presented.

Please let me know if there are questions regarding these comments at

Sincerely,

Raymond Hart
Executive Director
### December 29, 2021 FAQ - Question 32

<table>
<thead>
<tr>
<th>32. Are any LEAs excepted from the MOEquity requirements?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Under section 2004(c)(2) of the ARP Act, an LEA need not maintain equity if the LEA—</td>
</tr>
<tr>
<td>1. Has a total enrollment of less than 1,000 students;</td>
</tr>
<tr>
<td>2. Operates a single school;</td>
</tr>
<tr>
<td>3. Serves all students within each grade span with a single school; or</td>
</tr>
<tr>
<td>4. Demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of the LEA as determined by the Secretary.</td>
</tr>
</tbody>
</table>

### August 6, 2021 FAQ – Question 32

<table>
<thead>
<tr>
<th>32. Are any LEAs exempt from the MOEquity requirements?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Under section 2004(c)(2) of the ARP Act, an LEA need not maintain equity if the LEA—</td>
</tr>
<tr>
<td>1. Has a total enrollment of less than 1,000 students;</td>
</tr>
<tr>
<td>2. Operates a single school;</td>
</tr>
<tr>
<td>3. Serves all students within each grade span with a single school; or</td>
</tr>
<tr>
<td>4. Demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of the LEA as determined by the Secretary.</td>
</tr>
</tbody>
</table>

For FY 2022 MOEquity determinations, the Department recognizes that LEAs may face certain implementation challenges due to the enactment of the ARP Act in March 2021—when LEA budgeting was well underway in many places—and the impact of the pandemic, which has resulted in significant ongoing uncertainty about school-level enrollment for the 2021-2022 school year. Given such unique timing and implementation challenges due to the pandemic, the Department has determined that these circumstances are an example of “exceptional or uncontrollable circumstances” that justify a limited exception to the local MOEquity requirements for the 2021-2022 school year. Therefore, an LEA experiencing these circumstances may demonstrate that it is excepted from the MOEquity requirements for FY 2022 by certifying that it did not and will not implement an aggregate reduction in

For FY 2022 MOEquity determinations, the Department recognizes that LEAs may face certain implementation challenges due to the enactment of the ARP Act in March 2021—when LEA budgeting was well underway in many places—and the impact of the pandemic, which has resulted in significant ongoing uncertainty about school-level enrollment for the 2021-2022 school year. Given such unique timing and implementation challenges due to the pandemic, the Department has determined that these circumstances are an example of “exceptional or uncontrollable circumstances” that justify a limited exception to the local MOEquity requirements for the 2021-2022 school year. Therefore, an LEA experiencing these circumstances may demonstrate that it is excepted from the MOEquity requirements for FY 2022 by certifying to the Department that it did not and will not implement an
combined State and local per-pupil funding in FY 2022 (i.e., is not facing overall budget reductions). Please see Appendix B for a template certification form.

Upon gathering further information from States and LEAs, the Department understands that many localities are still facing fluctuating school enrollments and uncertain revenue collection as a result of the pandemic, particularly tax levies or other local resources that are established well in advance of the 2022-2023 school year. Given such challenges due to the pandemic, the Department has determined that these circumstances continue to be an example of “exceptional or uncontrollable circumstances” that justify a limited exception to the local MOEquity requirements for the 2022-2023 school year in instances in which there is no aggregate reduction in combined State and local per pupil funding in FY 2023 in the LEA. Therefore, an LEA experiencing these circumstances may demonstrate that it is excepted from the MOEquity requirements if it certifies that it will not implement an aggregate reduction in combined State and local per-pupil funding in FY 2023 (i.e., is not facing overall budget reductions). Please see Appendix B for a template certification form.

The Department otherwise anticipates few “exceptional or uncontrollable circumstances” that prevent an LEA from maintaining equity. As a result, each claim of exception will require a case-by-case review by the Department. For example, an “exceptional or uncontrollable circumstance” might include increased one-time expenditures in the baseline year (school year 2020-2021) due to the pandemic; a very small school where the MOEquity calculations do not result in meaningful information about resource availability; or a significant change in the expenses of a school that no longer serves a student whose educational and support needs

The Department otherwise anticipates very few “exceptional or uncontrollable circumstances” that prevent an LEA from maintaining equity. As a result, each claim of exception will require a case-by-case review by the Department. For example, an “exceptional or uncontrollable circumstance” might include an “exceptional circumstance” such as increased one-time expenditures in the baseline year (school year 2020-2021) due to the pandemic or a very small school where the MOEquity calculations do not result in meaningful information about resource availability, or an “uncontrollable circumstance” such as a significant change in
| required services that have a particularly high cost. | the expenses of a school that no longer serves a student whose educational and support needs required services that have a particularly high cost. |
ESSER DATA COLLECTION
November 29, 2021

RE: Elementary and Secondary School Emergency Relief Fund Recipient Data Collection Form

Docket No.: ED–2021–SCC–0096

PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division
U.S. Department of Education
400 Maryland Ave. SW
LBJ, Room 6W208D
Washington, DC 20202-8240

The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, submits comments in opposition to the Education Department’s massive new ESSER data collection proposed in the October 29, 2021, Federal Register, revising the Department’s July 2, 2021 initial ESSER data collection proposal. As highlighted in numerous public comments by state and local educational agencies on the initial July 2nd ESSER data collection, as well as the October 5th Maintenance of Equity data collection proposals, much of this data is not currently available, collected, or aggregated for a large segment of the nation’s schools and school districts. Yet, the Department continues to move forward with data demands that are disconnected from the actual school operations.

Two Million Hours of State and Local Staff Burden
The Council is extremely concerned with 2 million hours of additional staff burden being proposed in this revised ESSER data collection. The Council and other K-12 entities continue to point out that estimates of federal requirement burdens are frequently understated. The newly proposed LEA-level staff burden that increases from 5 hours for the initial ESSER data collection to 140 estimated hours for the revised data collection – a 2700 percent increase – is operationally overwhelming. Instead of just over a half day of staff time previously required for the July 2nd collection, the proposed ESSER revised data demands would consume three and a half (3 ½) weeks of staff time for every school district in the nation. For SEAs, the staff time burden would jump from 10 hours to 140 hours – a 1350 percent burden increase for SEA staff.

Much of the New Data Burden is Imposed by Agency Discretion
The Department’s Supporting Statement acknowledges that at least half of the new data collection burden (988,860 hours) is based on “agency discretion” (Supporting Statement page 9). This stands in sharp contrast to the state and local data reporting and dissemination in the recent Every Student Succeeds Act [ESEA section 1111(h)] which enumerates and restricts the data sets with specific statutory authority. The Council remains puzzled why the Department is not similarly concerned about the additional staff burden they are proposing for already overextended school districts and states. In short, this data collection amasses a vast amount of K-12 information that the Department clearly would like to gather and analyze but is not required to collect.
$95 Million in Additional Federally Imposed Costs on SEAs and LEAs

The cost estimate for this federally imposed data collection is $95 million. This added cost for school districts is particularly troubling as schools struggle with staff shortages, continuing COVID-related costs, learning deficits, and social/emotional issues resulting from the pandemic and return to in-person schooling. Moreover, public school districts have experienced a decline in enrollment due to the pandemic, and this additional financial burden will strain district budgets -- alleviating constraints on district budgets should be a priority.

Disconnected from the Reality of School Operations

While the U.S. Department of Education is imposing this additional federal paperwork and reporting, school districts are struggling to maintain health and safety protocols, recoup learning losses, address social readjustment to the learning environment, respond to staff shortages and burnout, and strategically redeploy administrative, central office, and instructional staff across uncovered classrooms, lunchrooms, and other operational areas. School districts are taking unusual steps to provide additional paid leave for staff; expand teacher planning time; eliminate central office-imposed administrative tasks and reporting; reduce the number of meetings, required training sessions, and non-academic duties; and curtail new programs and curricular initiatives. These local staffing-related actions are designed to allow a greater focus on instruction and support services needed by students and lessen staff workloads and personnel turnover in the continuing pandemic environment. Unfortunately, the Education Department is proceeding in the opposite direction with this and other massive national data collection mandates. Again, the Department appears unusually disconnected from actual school operations.

Unavailable Data Being Required

Numerous comments from state and local educational agencies on the July 2nd initial ESSER data collection and the October 5th Maintenance of Equity data collection and reporting requirements explain that many of the proposed data sets are not currently available, collected, or aggregated across many states, school districts, and schools.

These prior public comments from SEAs and LEAs exemplify the practical problems with the previous ESSER initial federal data demands, including:

- Inability to track school-level data in the detail and in the categories being proposed;
- Failure to align the proposed data collection and reporting categories with existing state and local expenditure codes;
- Inability to effectively categorize the vast range of allowable ESSER expenditures (15 enumerated use of funds as well as cross-references to four other federal K-12 statutory authorities);
- Lack of school-level data by student or subgroup;
- Lack of school-level data by student for specific program activities (e.g., high dose tutoring);
- ESSER school-level expenditures not tracked to high poverty schools;
- School-level staffing data, including hiring and retention, not collected;
- Access to specific categories of staff not collected;
- Lack of clarity on how to categorize or allocate IT and support services expenditures indirectly connected to learning loss interventions.
And now under this revised ESSER data collection, major new data requirements will exacerbate state and local data collection burdens with a substantial increase in the number of data items, including for the newly required MoEq school-level per pupil expenditures; participant counts disaggregated by activity and intervention; school-level allocations for high poverty and non-high poverty schools; school staffing by special job categories with FTE detail; correlations with the impact of COVID; and correlations with ESEA allocations to Title I eligible schools and non-Title I schools (Supporting Statement page 9). The Department’s acknowledgement that components of proposed ESSER data for the initial reporting year would be deferred until the second reporting year is of limited help, given the full scope of this new 2-million-hour federal data mandate.

Tracking, Collecting, and Reporting Student-Level Data on ESSER-funded Services Received by 10 Demographic Characteristics is Unrealistic. SEAs and LEAs do not generally track specific type of services receive by individual students through ESSER funds or for most other federal education funds by student subgroups. While some federal programs with specified eligible criteria (e.g., ESEA Title III – ELLs, IDEA – students with disabilities, McKinney-Vento – homeless, etc.) targeted a specific demographic group, they often do not break out multiple other demographic characteristics. Yet some proposed ESSER survey questions require the data by a minimum of 10 specific demographic groups to be tracked and reported. Unless a particular program activity is purposefully targeted to a particular group of students, for example, recoupment services for certain students with disabilities or after-school enrichment at a specific homeless shelter, detailed demographic information would typically not be available by subgroup. Further, school district data systems also are not set up to disaggregate numbers of students across 10 subgroups using technology purchased with ESSER funds (see ESSER Reporting Form Section 4, Subsection B, vvv). These new federal demands would require most every school district in the nation to create new data systems capable of disaggregated reporting. All such data sets should be eliminated from the revised ESSER data collection, except in cases where program activities are specifically designed to target distinct subgroups.

School Districts Do Not Determine Which Demographic Groups Are Disproportionately Affected by COVID-19

Despite the statutory 20% learning loss set-aside in the ESSER authorization stating that LEAs must ensure that the needs of student subgroups disproportionately affected by COVID-19 are addressed through evidenced-based intervention, LEAs generally do not determine the health status or risk profiles of population subgroups within their jurisdiction. Such determinations are made by state and local health authorities and have little practical relationship to individual student-level instructional and support services decisions in schools. The COVID impact questions in the proposed data collection, therefore, provide little operationally relevant information about learning loss or which students are targeted for specific interventions. In the alternative, the Department could use national CDC information to identify which population subgroups will be deemed to be disproportionately affected by COVID for ESSER purposes -- with the caveat that LEAs could add other populations groups from their community if warranted. All such data sets, including narrative descriptions, should be revised and streamlined to reflect such a CDC-based national subgroup COVID determination.
25 Categories of ESSER Expenditures Do Not Align Existing Data Collection Expenditure Categories for SEAs and LEAs. SEAs and LEAs would have to establish entirely new tracking and reporting systems to comply with the revised ESSER data collection requirements and its 25 expenditure categories. Any categorization across the 25 frequently overlapping expenditure categories will be imprecise at best. The three broad categories of expenditure (Physical Health and Safety; Academic, Social-Emotional and Mental Health; and Operational Continuity and Other Allowable Uses) provide a more appropriate and workable categorization.

SEAs and LEAs Generally Do Not Track Expenditures and Staffing by Job Category. In its response to comments on the July 2nd ESSER data collection, the Department acknowledges that detailed staffing data is not collected by many school districts and states. The Department, therefore, decided not to require such data in year one. Nonetheless ignoring the limited availability of such staffing data, the Department has decided to require this ESSER data for year two and beyond, in addition to the staffing data sets required in the October 5th MoEq proposed data collection.

Data Reporting Based on Title I School Eligibility is Not Required in the CARES, CRRSA, or ARP Emergency Legislation and is an Unnecessary Data Requirement
The ESSER statutes do not require allocations to be made to individual schools or categories, including Title I schools. Similarly, there is nothing in these COVID-related legislative measures that references any overlap between ESSER funding and Title I funding. The Title I data sets proposed by the Department are unrelated and not relevant to ESSER purposes. Requiring collection and reporting of ESSER expenditures per pupil in Title I schoolwide program schools, Title I Targeted Assistance Schools, Title I eligible-but-not-participating schools, and Non-Title I Schools is clearly unnecessary and excessive. All such data sets should be eliminated.

Backtracking Expenditures of CARES, CRRSA, and ARP Funds to New Data Reporting Categories is Unrealistic
Much of the CARES and CRRSA funds have been expended in prior state and local fiscal years and have been reported based on prior requirements and expenditure codes. Some expenditures go back as far as three fiscal years ago. Requiring the reporting of data from prior fiscal years in new data sets is time consuming, costly, unwarranted, and in some instances impossible. Requesting LEA FTE staffing data back to SY 2017-18 appears similarly unnecessary. Such data sets should be eliminated, or alternatively allowing an “unavailable” response.

Broad-based Narrative Questions and Responses are of Little Practical Use
Except in instances where a narrative explanation describes an “other” response, a 3000-character narrative description from every school district in the nation will likely provide little useful information on most ESSER activities. As previously stated, local data is generally not broken out by the multiple subgroups of students receiving services, so any narrative will be broad, imprecise, and oversimplified. Adding the additional factor of “disproportionate impact of COVID-19” adds even further generalization. Virtually all such narrative responses should be eliminated.

Inadequate Justification for Costly Data Collection.
The Department repeated justifications for its 2 million hours of data collection are inadequate and unavailing. The justifications cite a need for federal program monitoring and compliance,
public information and transparency, as well as addressing the impact of the COVID-19 virus on students and schools (Supporting Statement pages 2 and 3). However, state monitoring protocols for compliance with federal programs are already in place, in addition to single audit requirements. States have been monitoring compliance with emergency COVID legislation since March of 2020. This newly revised “2-million-hour” data collection is unlikely to produce any better compliance than processes in place since 2020. And the wide range of allowable expenditures make any noncompliance unlikely at best. Local expenditure decisions will be dictated by changing local-level needs for health and safety expenditures and learning and support services – not after-the-fact federal reports or publications.

The Department further suggests that the data collection and public posting of voluminous school-by-school expenditure and staff information is necessary public information on the allocation and use of funds. However, the proposed data requests go far beyond the allocation and use of ESSER funds into other school district expenditures and school-by-school staffing determinations. And only an infinitesimal proportion of parents and families will ever access the proposed data sets or even differentiate this information from multiple other data indicators that similarly are reported publicly. Moreover, the attempt to tie ESSER activities to the disproportionate COVID impact upon differing demographic groups is generalized and imprecise.

These ESSER data justifications also appear to mask the Department’s attempt to create a massive school-level data base on school expenditures and staffing across some 90,000 public schools, which would be primarily used by Education Department analysts, advocacy groups, and social science researchers -- absent any statutory authority to do so. Such excessive data collection efforts have been proposed and rejected by Congress as recently as the 2015 ESSA authorization.

The Council further notes that similar data is collected under the CRDC initiative of OCR or by NCES, raising questions about the need for many of the revised data sets. The Council disagrees with any suggestion that the 2-million-hour data burden for schools, school districts, and state agencies is outweighed by the benefit of public information and transparency.

In sum
Multiple commenters will undoubtedly detail the unavailability and technical problems at the school-, district-, and state levels resulting from the October 29th ESSER revision data collection proposal. The Council again underscores the 2-million-hour staff burden at the school, district, and state level from this unprecedented expansion of federal K-12 data collection, as the nation’s public school systems try to emerge from the vestiges of the pandemic.

The Council and other comments raised identical issues in the July 2nd proposed ESSER data collection and again in the October 5th proposed data requirements and request for information pertaining to ARP maintenance of equity provisions. The Department’s unresponsiveness to prior public comments on similar data collection proposals remains troubling.

Finally, the Department cites purported authority for this data collection based on the Secretary’s general authority to establish rules and regulations for administration, management, and operational purposes, and to collect data to determine program effectiveness [20 USC 1221e-3,
1231a, and 3474 – see Supporting Statement page 2]. Yet most of the required data sets do not address program effectiveness and are not regulatory in nature. The Department refers to separate data collection authority from each of the COVID legislative measures (Supporting Statement page 2) but fails to cite the actual statutory authority. Two million hours of federally mandated state and local data collection should have a solid foundation in statute, which this data collection does not.

Recommendations:

- The Department should withdraw this data collection proposal, and if necessary, propose a significantly scaled-back ESSER data request for new public comment.

- In the alternative, the Council recommends that the Department contract for an ESSER Program Evaluation examining the use of ESSER funds across a small cross-section of SEAs and LEAs.

Please contact the Council if there are questions regarding these comments at rhart@cgcs.org.

Sincerely,

Raymond Hart
Executive Director
EMERGENCY BROADBAND BENEFIT PROGRAM
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Emergency Broadband Benefit Program
WC Docket No. 21-450

COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools is pleased to submit comments in response to the Commission’s Public Notice published on November 18, 2021 (WC Docket No. 21-450) regarding the implementation of the Affordable Connectivity Program. The Council supports efforts to provide at-home internet service for low-income households and urges the Commission to continue to maximize eligibility through school lunch programs.

Introduction

The Council of the Great City Schools appreciates the immense work undertaken by the Commission to support urban school district efforts to keep students and families connected during the pandemic. In major cities and throughout the United States, public schools have revamped operations and instructional systems to help meet the unexpected COVID-19 challenges the nation has struggled with for almost two years. Schools made a rapid transformation from school-based to home-based remote learning early in 2020, and even with most students and staff returning to physical classrooms this school year, urban school districts are working diligently to ensure the benefits of digital learning continue to be a part of their educational offerings. Central to all of these efforts is ensuring that students have reliable internet access when they are at home.

It is essential that the Commission continues to encourage this work by ensuring FCC programs focus support on those who lack means and opportunity, and that future investments our nation makes are centered around network access. Since COVID-19 began forcing changes to K-12 instruction across the country, the nation has become more aware of the institutional inequities that exist in our public school systems, especially in large urban districts with some of the highest concentrations of students of color, English learners, and high poverty. The 75 school district members in the Council alone (out of 14,000 school districts in the US) enroll almost 8 million urban students, including approximately 28 percent of the nation’s Hispanic students, 29 percent of the nation’s African American students, and 25 percent of the nation’s children living in poverty.
Household Eligibility Through the School Lunch Program is Essential

The Council was pleased the Commission determined that households with students in schools participating in the Community Eligibility Provision (CEP) were eligible for the Emergency Broadband Benefit (EBB) Program. We believe the Commission should continue this CEP approach for the Affordable Connectivity Program (ACP), while also expanding eligibility to students attending Provision 2 or Provision 3 schools in order to further ease access for low-income families.

The EBB program as enacted by the Consolidated Appropriations Act of 2021 and the ACP in the Infrastructure Investment and Jobs Act both allowed for discounted internet service to households that, among many possible criteria, have children that qualify for Free- or Reduced-Priced Lunch (FRPL). As we pointed out in our initial comments on EBB, current laws governing student data privacy creates conflicts that complicate district efforts to verify income status for students’ households, and we continue to urge caution and flexibility in the implementation of ACP.

The use and disclosure of household income data collected for the purposes of determining eligibility for free- or reduced-priced lunch is heavily protected by statute. The Family Educational Rights and Privacy Act (FERPA) requires parental consent to share data with third parties unless a federal exemption is allowed. The National School Lunch Act (NSLA) also underscores the confidentiality of income data and limits its use outside of the school district. To comply with these existing laws, school districts need to strip data of identifiable student information and/or collect parental consent to release the relevant information – a process that places heavy staffing and time demands on central office school district staff. Providing this highly sensitive data to for-profit providers will also result in additional strictures.

As a result of these obligations, we suggested that the Commission consider options that protect student privacy while also easing district time, burden, and expense, such as approving EBB eligibility for any student who attends a CEP school. This approach allows districts to verify a student’s attendance at a high poverty school without revealing individual family income levels. We believe these reasons are significant enough that the Commission should continue the CEP permissiveness in ACP, and also extend eligibility to students in Provision 2 or 3 schools due to the same benefits: it allows school districts to verify household eligibility for broadband discounts through attendance at a high poverty school while preserving personally-identifiable student data.

As the Commission knows, many urban schools with high poverty populations no longer collect annual income surveys from families, and instead use CEP or the alternative approaches allowed under Provision 2 or 3 to determine NSLA eligibility. The CEP option allows schools or districts with a high concentration of low-income students to provide free meals to all students, based on direct certification with other programs with means-tested income requirements like SNAP or TANF (as a proxy for “free lunch” students) and a multiplier that captures additional low-income students (i.e. the traditional “reduced-price lunch” eligible). Schools using the Provision 2 or 3 approaches also provide free meals to all students and reduce the burden for families by locking in eligibility levels during a base year and not requiring applications for a few subsequent years.
We appreciate the Commission’s concerns about authorizing ACP eligibility for families who do not meet the program’s income requirements yet attend schools that participate in CEP or Provisions 2 or 3. The Council would note that USDA changes allowing alternative provisions in high poverty schools first occurred in 1980. As it did then, the importance of supporting the needs of low-income families continues to offset the small possibility that benefits are made available to a sliver of the school population that may not need a free meal.

Due to the high levels of poverty at these CEP or Provisions 2 or 3 school sites, we believe the risk to ACP is minimal and similarly does not outweigh the substantial benefits for low-income families. Schools that elect to participate must pay the difference between Federal reimbursement for eligible students and the cost of providing free meals to all students in the schools. Under Provisions 2 or 3, the chosen schools certify the highest possible eligibility percentage so the school district’s non-Federal expense is minimal for the duration of their participation. And school districts typically only select schools (or groups of schools) to participate in CEP when the percentage of identified students present is high enough that 100% eligibility is reached. These schools are truly among the poorest in their school districts.

In response to questions about families not eligible for NSLA support potentially being made eligible, we would also underscore that amendments in the Infrastructure Investment and Jobs Act actually broadened ACP’s non-school-based eligibility criteria from 135% to 200% of the poverty line, which is higher than the 185% maximum income for reduced price lunch. Finally, we would note that families are often deemed “ineligible” for NSLA benefits due to non-response to verification efforts rather than excessive income. This has been borne out in multiple studies from USDA’s Food and Nutrition Service (FNS) over the years. In the 2021 “Study of Nonresponse to the School Meals Application Verification Process,” the majority (63 percent) of verification non-responders were actually eligible for free and reduced-price meals based on their household income. The same study also highlighted that because verification efforts largely target error-prone applications, the number and percentage of ineligible families found in verification studies is, “likely much higher than would be found among all households approved for [free and reduced-price] meals.”

The reasons that families do not respond to verification requests overlap with the reasons why they hesitate to sign up for assistance programs, including language barriers, high mobility, and fear of the impact on immigration status for members of their household. These fears were heightened in recent years, as proposed changes to the Department of Homeland Security’s Public Charge rule and other federal policies had a chilling effect on enrollment in means-tested assistance programs. A December 2020 study from the Migration Policy Institute analyzed American Community Survey Census data from 2016 through 2019, revealing an overall decline in participation in TANF, SNAP, and Medicaid during these years, and a more rapid drop for noncitizens.

Many of the urban students and families that would most benefit from the ACP may not sign up on their own but are more likely to participate when automatic eligibility is granted as a result of attendance at a high poverty school. The importance of bridging the homework and connectivity gap for students and families has become starkly apparent during the COVID-19 emergency, and the Commission can further the progress made on their long-term goal of reducing internet inequities with ACP funding. The Council supports the Public Notice’s proposal to make multiple
options available to the low-income households the Infrastructure Act intends to benefit, and that will help schools broaden participation in the Affordable Connectivity Program.

**Addressing Fraud, Waste, and Abuse**

The Council also understands the Commission’s concerns in the Public Notice about potential waste, fraud and abuse, particularly in light of the findings in the subsequent November 22, 2021, memorandum from the Commission’s Office of Inspector General. That advisory highlighted fraudulent EBB enrollments based on the Community Eligibility Provision. OIG found that EBB providers’ sales agents are enrolling households by falsely claiming a dependent child attends a CEP school during the eligibility verification process.

The Council cautions the Commission against responding with additional requirements that would increase burden, time, or expense for school district verification efforts or deter potential beneficiaries from participating. As noted earlier, there are significant statutory protections that districts must abide by when disclosing family income information, and multiple reasons why eligible families may defer participation. We urge the Commission not to create additional hurdles for participation or remove support for CEP eligibility entirely when the concerning behavior is clearly and squarely on unscrupulous providers and sales agents.

Stakeholders provided detailed information and lengthy comments earlier this year, and the Commission used this feedback in short order to establish procedures and protocols ensuring legitimate beneficiaries received support from EBB. As the Public Notice outlines, this includes requirements that:

- households are either required to provide specific information and documentation at the time of enrollment, including the name of the consumer or benefit qualified person, qualifying program, the name of the school or school district that issued the documentation, issue date of the documentation that aligns with the benefit period, and a letter from the school or school district itself confirming that a member of the household is approved to participate in the school lunch or breakfast program during the allowed time period; and

- service providers must certify that it relied on school-provided information and must retain documentation of (1) the school providing the information, (2) the program that the school participates in, (3) the household that qualifies (and qualifying student) and (4) the program the household participates in.

Systems for verifying eligibility cannot be effective if the verification never takes place. The OIG memo makes this point clear by stating that, “National Verifier and NLAD systems will not work properly if providers and their agents do not furnish authentic, bona fide customer information.” The memo also highlights that the fraudulent enrollment is not a case of members of the public trying to game the system, and includes the statement that, “Evidence shows this is not consumer-driven fraud—enrollment data directly links certain providers and their sales agents to these enrollments.”
We know that USAC, the Commission and its OIG take program abuse seriously and expect vigilant oversight and stewardship of the funding for this important program. We also expect follow-through on the warning that providers who defraud FCC programs by violating program enrollment rules will be held accountable and may be subject to civil or criminal sanctions. However, we do not expect that low-income families would be punished or that significant burden is placed on school districts as a result of actions outside of either’s control. The Commission and its Administrator should follow the processes that are in place to ensure the proper verification steps are followed, and that ACP benefits reach their intended target.

Conclusion

Many urban students have long lacked access to the educational resources they now must have at home to participate in the new technology-based environment, including broadband connections, devices, and computers. The Council knows that this access is an essential part of our district’s educational efforts to develop a resilient and thriving learning community, and our nation must ensure that students have reliable Internet access to connect with educational resources outside of schools. Families and households at all income levels should have the access they need to look for employment, take classes, work from home, or videoconference with friends and family. With the Commission’s assistance we can continue to strengthen the community fabric that our families and students need to thrive.

Respectfully Submitted,

Raymond Hart, Executive Director
Council of the Great City Schools

Address:
Council of the Great City Schools
Suite 1100N
1331 Pennsylvania Avenue, NW
Washington, DC 20004

Member districts: Albuquerque, Anchorage, Arlington (Texas), Atlanta, Aurora, Austin, Baltimore, Birmingham, Boston, Bridgeport, Broward County (Ft. Lauderdale), Buffalo, Charleston County, Charlotte-Mecklenburg, Chicago, Cincinnati, Clark County (Las Vegas), Cleveland, Columbus, Dallas, Dayton, Denver, Des Moines, Detroit, Duval County (Jacksonville), East Baton Rouge, El Paso, Fort Worth, Fresno, Guilford County (Greensboro, N.C.), Hawaii, Hillsborough County (Tampa), Houston, Indianapolis, Jackson, Jefferson County (Louisville), Kansas City, Long Beach, Los Angeles, Manchester, Miami-Dade County, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Newark, Norfolk, Oakland, Oklahoma City, Omaha, Orange County (Orlando), Palm Beach County, Philadelphia, Pinellas County, Pittsburgh, Portland, Providence, Puerto Rico, Richmond, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Santa Ana, Seattle, Shelby County (Memphis), St. Louis, St. Paul, Stockton, Toledo, Toronto, Tulsa, Washoe County (Reno), Washington, D.C., and Wichita.
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Emergency Broadband Benefit Program WC Docket No. 21-450

REPLY COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools is pleased to submit reply comments in response to the Commission’s Public Notice published on November 18, 2021 (WC Docket No. 21-450) regarding the implementation of the Affordable Connectivity Program. The Council supports efforts to provide at-home internet service for low-income households and urges the Commission to maximize eligibility through school lunch programs and re-consider direct support for school districts.

Introduction

The Council of the Great City Schools is a coalition of the nation’s largest urban school districts. Collectively, our 75 members enroll almost 8 million students, including approximately 28 percent of the nation’s Hispanic students, 29 percent of the nation’s African American students, and 25 percent of the nation’s children living in poverty. Our students and families have long lacked access to the technology resources everyone is now expected to have at home, including Internet connections, devices, and computers. The Council appreciates the incredible work of the Commission and the Wireline Competition Bureau to help bridge this divide during the pandemic, and we hope to build on the momentum of the last two years to make lasting changes to digital equity for urban school communities.

Near Unanimous Support for Continuing Household Eligibility Through the School Lunch Program

In our initial comments on the transition to the Affordable Connectivity Program, the Council urged the Commission to retain the Emergency Broadband Benefit’s eligibility for households with students attending a school participating in the Community Eligibility Program (CEP). This option protects student privacy while also easing school administrator time, burden, and expense by allowing districts to verify a student’s attendance at a high poverty school without revealing individual family income levels.
In reviewing the comments submitted to the Commission, we were pleased to see there was near
unanimous support for continuing the CEP eligibility under ACP from the variety of stakeholders
that addressed the topic. Municipal representatives were in support, with the County of Los
Angeles sharing that the Commission, “should continue allowing households with students
enrolled in schools or school districts participating in the Community Eligibility Provisions be
eligible for ACP. This is an excellent provision that allows low-income schools and school districts
to streamline messaging about broadband access for their students.” It also has support from
statewide agencies, including the Michigan Public Service Commission, which stated, “The MPSC
agrees with the FCC that households with students enrolled in schools or school districts that are
participating in the CEP should remain eligible to participate in the ACP regardless of whether
anyone in the household applied for school lunch or breakfast assistance individually...The ACP’s
purpose is to help close the digital divide in America by making broadband more affordable and
allowing this participation will help to achieve that goal.”

Support was also offered by private sector stakeholders and their representatives. NCTA - The
Internet & Television Association suggested that, “To ensure ACP reaches the households that
have the most need, the Commission should continue to include enrollment in schools participating
in the CEP as a qualifying benefit program.” Broadband internet provider Altice USA also thought
the Commission should, “Continue to include enrollment in a Community Eligibility Provision
(“CEP”) school as a qualifying ACP program.” We also highlight the comments of the National
Association of Telecommunications Officers and Advisors (NATOA), who said, “The Public Notice
suggests that moving from the emergency nature of the EBB to a longer-term program of
ACP might change the reasoning behind the initial decision to allow eligibility through
participation in the CEP. We do not believe there is a compelling distinction in this instance. The
IIJA [Infrastructure and Investment Jobs Act] did not alter the statutory provision for eligibility
based on receiving benefits under the free and reduced price lunch program.”

As we stated in our initial comments, we believe the benefits are significant enough for the
Commission to not only continue the CEP permissiveness, but also extend eligibility to students
in Provision 2 or 3 schools due to the same benefits: it allows school districts to verify household
eligibility for broadband discounts through attendance at a high poverty school while preserving
personally-identifiable student data. Comments from the National League of Cities (NLC) also
endorsed the use of CEP and Provisions 2 and 3, and like the Council’s comments, similarly
cautioned against creating additional burdens for low-income families. “NLC supports
maintaining the decision from EBB to allow households with students enrolled in schools or
districts participating in the Community Eligibility Provision to participate in ACP, without
demonstrating individual qualification for free or reduced-price school lunch or breakfast. NLC
also supports expansion of that eligibility coverage to other school-wide administrative provisions.
Requiring additional household-specific eligibility documentation for those families is unlikely to
prevent substantial waste, fraud, or abuse, but the administrative hurdles are likely to shut out
otherwise eligible households from taking advantage of the benefit.”

Finally, we would note that the lone set of comments we found casting doubt on the need for CEP
support came from a coalition of rural broadband providers that mentioned the OIG findings of
fraud that was in fact committed by providers as one reason. This holdout then troublingly
questioned whether a specific state it was citing as an example was truly poor enough to justify
CEP eligibility for ACP. The state in question was West Virginia, which ranks in the top ten in the nation for both poverty and lack of household broadband connections.

Support for Direct School District Involvement for Eligible Households

In our January 2021 comments on the Emergency Broadband Benefits program, the Council suggested that school districts paying the cost of internet connections for students and families should be eligible for support through EBB. “We urge the Commission to direct telecommunications providers to apply the Emergency Broadband Benefit discounts outlined in the CAA to the charges that school districts are paying for eligible recipients, such as through at-home wired connections and mobile hotspots,” we offered at the time. “Even where low-cost services are available, many low-income households still cannot afford the service or do not qualify for the home plans offered by internet providers because they do not have a bank account or sufficient credit history.” As we noted in our initial comments on the ACP Public Notice, many families are also simply reluctant to sign up due to language barriers, high mobility, and fear that accepting public assistance may impact the immigration status for members of their household.

The Commission declined our suggestion for school district support under EBB, perhaps because subsequent funding became available though the Emergency Connectivity Fund (ECF) under the American Rescue Plan Act. As USAC reviews applications and distributes ECF money, school districts now must plan for the inevitable depletion of that program’s one-time funding. A number of commenters suggested ways in which direct school district involvement in ACP could be beneficial for eligible families that are unwilling to sign up on their own.

In their comments, Education Superhighway asked the Commission to, “Allow state and local governments, trusted institutions and approved non-profit organizations that are unaffiliated with service providers to submit verification requests through the National Verifier on behalf of households even if the households’ consumers are not physically present.” They added that the Commission also should, “Provide resources to state and local governments, trusted institutions and non-profit organizations to conduct outreach to unconnected households and assist them in enrolling in the National Verifier and Affordable Connectivity Program.” The organization known as Common Cause suggested, “The Commission should design a grant program with parameters that ensure funds are going to trusted community-based organizations that will effectively reach eligible households. Community-based organizations should include nonprofits, anchor institutions, local governments, civil rights groups, and other trusted entities with a local presence that representing marginalized communities.”

Similar to the Council’s January 2021 comments on EBB, ACP comments submitted jointly by the City of Boston, Montgomery County (MD), the District of Columbia, and the Texas Coalition of Cities for Utility Issues shared our outlook that school district involvement should go beyond verification and outreach. The City of Boston et al. stated, “The Commission should permit bulk purchasers of broadband services such as schools, public housing and public interests to continue to make purchases for eligible households and allow those households to assign any credit to the bulk purchaser….For instance, Boston Public Schools hold a bulk purchase contract with Comcast Internet Essentials and manage the voucher process and family connection directly….By permitting
the eligible household to assign their discount credit to the purchasing agent, the Commission could piggyback on existing relationships and successes. Not only would such an act by the Commission make the transition seamless, it would also allow the program to benefit from the reduced rates these bulk purchases have been able to negotiate.” Joint comments from E-Rate Central and the Schools, Health & Libraries Broadband (SHLB) Coalition expressed similar support and echoed concerns about next steps for school districts once the finite amount of ECF funding is expended. “Schools and libraries, which are currently permitted to engage in bulk purchasing under the ECF program, should also be permitted to participate in the ACP program so that they can continue providing services to low-income families after the ECF program sunsets.”

Conclusion

The Council’s members have worked tirelessly to expand broadband connectivity and educational opportunity for students with the greatest need during the COVID-19 pandemic. This at-home access is an essential part of districts’ educational offerings for students, and a modern necessity for families and households that want to look for employment, take classes, work from home, or videoconference with school staff, doctors, friends, and family. With the Commission’s assistance and flexibility, urban school districts can continue to support internet access for students and families through these challenging times and into the future.

Respectfully Submitted,

Raymond Hart, Executive Director
Council of the Great City Schools

Address:
Council of the Great City Schools
Suite 1100N
1331 Pennsylvania Avenue, NW
Washington, DC 20004

Member districts: Albuquerque, Anchorage, Arlington (Texas), Atlanta, Aurora, Austin, Baltimore, Birmingham, Boston, Bridgeport, Broward County (Ft. Lauderdale), Buffalo, Charleston County, Charlotte-Mecklenburg, Chicago, Cincinnati, Clark County (Las Vegas), Cleveland, Columbus, Dallas, Dayton, Denver, Des Moines, Detroit, Duval County (Jacksonville), East Baton Rouge, El Paso, Fort Worth, Fresno, Guilford County (Greensboro, N.C.), Hawaii, Hillsborough County (Tampa), Houston, Indianapolis, Jackson, Jefferson County (Louisville), Kansas City, Long Beach, Los Angeles, Manchester, Miami-Dade County, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Newark, Norfolk, Oakland, Oklahoma City, Omaha, Orange County (Orlando), Palm Beach County, Philadelphia, Pinellas County, Pittsburgh, Portland, Providence, Puerto Rico, Richmond, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Santa Ana, Seattle, Shelby County (Memphis), St. Louis, St. Paul, Stockton, Toledo, Toronto, Tulsa, Washoe County (Reno), Washington, D.C., and Wichita.
IDEA
October 30, 2021

The Honorable Katherine Neas
Acting Assistant Secretary, OSERS
U.S. Department of Education
400 Maryland Avenue, SW
Washington DC, 20202

David Cantrell, Ph.D.
Acting Director, OSEP
U.S. Department of Education
550 12th Street, SW
Washington, DC 20202

Dear Assistant Secretary Neas and Dr. Cantrell:

The Council of Administrators of Special Education (CASE) and our undersigned partners are writing to express concerns about the Return to School Roadmap guidance document on Individualized Education Programs (IEP) issued by OSERS on September 30, 2021.

The attached memo provides our comprehensive review of Section D in the context of the pandemic, school closures, and ongoing national circumstances. While we believe it is helpful and appropriate for OSERS to attempt to provide clarity for SEAs and LEAs as they move forward, we have some important concerns where OSERS guidance appears to be in conflict with applicable case law and the language of the Individuals with Disabilities Education Act (IDEA). Specifically, we believe Section D of the guidance document provides a new and incorrectly expanded interpretation of "compensatory services," particularly with respect to when and whether such services are appropriate and by whom this determination is made.

CASE and other groups listed here have expressed concerns about the use of the term "compensatory services" since March 2020 when the term was first incorrectly used in COVID-19 guidance. The 2021 guidance continues that incorrect usage and expands it further by conflating the legal remedy of compensatory services with the established functions and procedures of the IEP team.

We urge OSERS to issue a clarification of the September 2021 guidance, so that students receive appropriate services and limited resources are not used on unnecessary legal proceedings. We are happy to engage further to this end. Please feel free to contact Phyllis Wolfram, CASE Executive Director, pwolfram@casecec.org, or Myrna Mandlawitz, CASE Policy/Legislative Consultant, mrmassociates@verizon.net.

Thank you.

Council of Administrators of Special Education
AASA, The School Superintendents Association
Association of Educational Service Agencies
Association of School Business Officials International (ASBO)
Council of the Great City Schools
National Association of Elementary School Principals
National Association of Secondary School Principals
BUDGET
Email Update – House Passage of Build Back Better Reconciliation Bill

From: Manish Naik
Sent: Monday, November 22, 2021 11:16 AM
To: Legislative Liaisons
Subject: CGCS legislative meeting today at 1pm ET

Legislative Liaisons of the Great City Schools –

We have a legislative meeting today at 1pm ET to discuss the Build Back Better Act that passed the House last week, items on the congressional to-do list in December, and other federal activity. The Zoom information for the meeting is below this email.

On Friday, the U.S. House of Representatives passed H.R. 5376, the reconciliation legislation known as the Build Back Better Act. The legislation now moves to the Senate where consideration will take additional time and changes are likely. If changed by the Senate before passing that chamber, the bill would have to return to the House for approval once more before it can be signed into law. A summary of key provisions for urban school districts is attached, including additional details on:

- Approximately $450 million in teacher prep and pipeline, minority educator and principal/school leader development funding
- Universal and free preschool for all 3- and 4-year-olds
- Expansion of access to affordable child care
- Extension of the American Rescue Plan’s expanded Child Tax Credit for one year
- An additional $300 million for the FCC’s Emergency Connectivity Fund
- Expansion of free school meals during the school year through CEP changes and provide a $65 per child per month benefit to the families of 29 million children to purchase food during the summer
- Increases the maximum Pell Grant by $550, plus investments in HBCUs and MSIs

We hope to talk to you today, but thank you for all of your hard work and dedication if you are unable to join us. Happy Thanksgiving.

--Manish Naik
Council of the Great City Schools
TITLE II: SUBTITLE A — EDUCATION MATTERS

PART 1 — ELEMENTARY AND SECONDARY EDUCATION

Section 20001. Grow Your Own Programs -- $112.7 million
Provides grants to eligible partnerships to support “Grow Your Own” programs that address shortages of teachers in high-need subjects, shortages of school leaders in high-need schools, and low diversity within the teacher and school leader workforce. Eligible partnerships must integrate coursework with a year-long clinical residency to support candidates in earning their associate’s, bachelor’s or master’s degrees and a teaching or school leadership credential. Partnerships must recruit individuals with experience in high-need subjects or fields who are not certified to teach or lead, with a specific focus on individuals from underrepresented populations and those who either live in or come from the school service area. Partnerships must also provide academic and nonacademic support to candidates, including advising and financial assistance.

Section 20002. Teacher Residencies -- $112.3 million
Provides grants to eligible partnerships for the development and support of high-quality teacher residency programs, as described in section 202(e) of the Higher Education Act of 1965, except that funds are available for teacher residency programs for prospective teachers in a bachelor’s degree program.

Section 20003. Supporting School Principals -- $112.3 million
Provides grants for the development and support of school leadership programs, as described in section 2243 of the Elementary and Secondary Education Act of 1965.

Section 20004. Hawkins Centers of Excellence -- $112.3 million
Provides grants for the Augustus F. Hawkins Centers of Excellence Program, as described in section 242 of the Higher Education Act of 1965, to support teacher preparation programs at Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs).

Section 20005. Funding for the Individuals with Disabilities Education Part D Personnel Development -- $160.8 million
Provides grants to eligible entities for the development of personnel to serve children with disabilities, as described in section 662 of the Individuals with Disabilities Education Act.

Section 20006. Grants for Native American Language Teachers and Educators -- $200 million
Provides grants to prepare, train and offer professional development to Native American language teachers and Native American early childhood educators to ensure the survival and continuing vitality of Native American languages, as described in section 803(C) of the Native American Programs Act.
PART 2 — HIGHER EDUCATION

Section 20024. Retention and Completion Grants -- $500 million over seven years
Provides grants to states, systems of institutions of higher education, and TCUs to improve student outcomes, including enrollment, retention, completion, and transfer rates, and labor market outcomes. Of this amount, at least $142,500,000 will be used to implement reforms and practices meeting certain evidence standards. As a condition of continuing to receive funds under the program, grantees must demonstrate adequate progress in improving outcomes among underserved students, including low-income students, students of color, students with disabilities, first generation college students, student parents, and students in need of remediation.

SUBTITLE C — WORKFORCE DEVELOPMENT MATTERS

PART 1 — DEPARTMENT OF LABOR

Section 22002. Adult Worker Employment and Training Activities -- $1 billion over five years
Provides for WIOA state grants for Adult Employment and Training Activities, for career services, including individualized career services, supportive services, and needs-related payments to adults, and training services, including individual training accounts which can be used at any education or training program on a state’s eligible training provider list such as local community colleges or registered apprenticeships. States or local areas are allowed to use up to 40 percent of funds for incumbent worker training if such training is provided to low-wage workers.

Section 22003. Youth Workforce Investments Activities -- $1.5 billion over five years
Provides for WIOA state grants for Youth Employment and Training Activities, paid work experience for in-school and out-of-school youth, and for partnering with community-based organizations to serve out-of-school youth, including in high-crime or high-poverty areas.

Section 22005. Reentry Employment Opportunities -- $500 million over five years
Provides for Reentry Employment Opportunities, of which $125 million shall be used for competitive grants to national and regional intermediaries for activities that prepare young adults who are justice-involved or who have dropped out of school or work prepare for employment, prioritizing projects serving high-crime and high-poverty areas.

PART 2 — DEPARTMENT OF EDUCATION WORKFORCE DEVELOPMENT APPROPRIATIONS

Section 22101. Adult Education and Literacy -- $700 million over six years
Provides for adult education and literacy services authorized under WIOA, with not less than 10 percent of funds that states award to eligible providers reserved for corrections education and education of other institutionalized individuals.

Section 22102. Career and Technical Education -- $700 million over six years
Provides funds for activities related to Career and Technical Education, of which $600 million is provided for State grants authorized under the Carl D. Perkins Career and Technical Education Act of 2006 and $100 million is provided for innovation and modernization grants authorized under that Act.
SUBTITLE D — CHILD CARE AND UNIVERSAL PRESCHOOL

Section 23002. Universal Preschool — such sums as necessary over six years (est. $110 billion over 6 years)
Provides over $18 billion during the first three years and such sums as may be necessary in the following three years for the HHS Secretary in collaboration with the ED Secretary, to conduct a universal, mixed delivery preschool program. Eligible providers include licensed child care programs; Head Start grantees; LEAs; or a consortium of those entities. States are required to develop and implement state preschool standards, and ensure all eligible providers meet such standards. Additionally, states are required to identify high-need communities, and to implement universal preschool programs in those communities first, before expanding throughout the rest of the state. For the first three years of the program, the federal share is equal to 100 percent of the state’s expenditures for preschool services. In subsequent years, the federal/state share changes to 90/10, 75/25, and 60/40. $2,500,000,000 annually is reserved to improve compensation of Head Start staff ending at year six. For States opting to not participate, funding to expand Head Start and award universal preschool grants to localities will be available through HHS. Eligible localities include a Head Start agency, a local education agency (LEA), or a city, county, or other unit of general local government.

Section 23001. Child Care — Establishment of Birth Through Five Child Care and Early Learning Entitlement Program — such sums as necessary over six years (est. $273 billion over six years)
Provides over $100 billion to support high quality child care during the first three years and such sums in the following three years through a new child care and early learning entitlement program for high-quality, affordable child care for children ages birth to five, increasing wages for the early childhood workforce, and investing in child care quality and supply (including facilities).

Family child care copayments are capped to ensure that no eligible family pays more than 7 percent of their income on child care through a sliding scale fee system. Eligible families earning under 75 percent of the State Median Income (SMI) would pay nothing toward child care. After a three-year phase in period, families earning no more than 250 percent of SMI would be eligible for child care assistance through a child care subsidy or grant-funded child care slot.

During the first three years, participating states would receive an allotment based on the Child Care & Development Block Grant (CCDBG) formula. Child care assistance is phased-in by income eligibility: families earning up to 100 percent SMI become eligible for assistance in year one, with families earning up to 125 percent of SMI in the second year, 150 percent of SMI in the third year, and families up to 250 percent of SMI in the fourth year.

Beginning in fiscal year 2025, the program provides such sums as may be necessary to carry out a child care entitlement program. States would receive reimbursement from the federal government for the expenses needed to operate a child care entitlement program and would serve all eligible children within the state who seek child care assistance. The federal-state cost sharing structure would have the federal government covering 90 percent of the cost of direct child care services for children, and states covering 10 percent of expenses. States are reimbursed at their Federal Medical Assistance Percentage (FMAP) rate for child care quality and supply activities and at 50 percent for administrative expenses. States would base child care payment rates on a statistically valid cost estimation model, including pay parity with similarly credentialed elementary school teachers. For States opting to not participate, funding to expand Head Start and award Local Birth to Five Early Learning Grants to localities will be
available through HHS. Eligible localities include a city, county, or other unit of general local government.

**SUBTITLE E — CHILD NUTRITION AND RELATED PROGRAMS**

*Section 24001. Expanding Community Eligibility -- $6 billion over 5 years*

Invests in free school meals by allowing 9 million more children to access meals through the Community Eligibility Provision (CEP). This section: (1) increases the CEP multiplier used to determine the rate of federal reimbursement to schools from 1.6 to 2.5; and (2) lowers the participation threshold for schools to elect CEP from 40 percent to 25 percent of identified students. Additionally, it allows for statewide election of CEP. These changes are in effect through FY27.

*Section 24003. Summer Electronic Benefit Transfer for Children Program -- $3 billion over 2 years*

Invests in expanding the Summer Electronic Benefit Transfer (Summer EBT) program to provide nutrition benefits to eligible low-income children nationwide. The benefit provides $65/month for eligible children through FY2024.

*Section 24004. School Kitchen Equipment Grants -- $30 million*

Provides grants for schools to purchase equipment in order to offer healthier meals, improve food safety, and increase scratch cooking.

*Section 24005. Healthy Food Incentives Demonstration -- $250 million*

Provides competitive grants to schools for activities that support healthy food offerings and healthy lifestyles. Such activities include improving the nutrition quality, scratch cooking, nutrition education, procurement of local and culturally appropriate food, and reducing less healthy food.

**TITLE III -- SUBTITLE L — DISTANCE LEARNING – FEDERAL COMMUNICATIONS COMMISSION**

*Section 31401. Additional Funds for Distance Learning -- $300 million*

This section appropriates an additional $300 million to the Emergency Connectivity Fund to allow schools and libraries to provide students, teachers, and library patrons with internet connectivity and connected devices. It explicitly prohibits the funds from being used to purchase devices or services from untrusted suppliers like Huawei or ZTE.

**TITLE VI -- SUBTITLE B — COMMUNITY VIOLENCE PREVENTION – DEPARTMENT OF JUSTICE**

*Section 61001. Community-Based Violence Intervention Programs -- $2.5 billion through FY 2031*

Provides competitive grants and contracts that the Attorney General, through the Assistant Attorney General of the Office of Justice Programs, the Director of the Office of Community Oriented Policing Services, and the Director of the Office on Violence Against Women will use to support evidence-informed intervention strategies to reduce community violence, training, technical assistance, research, evaluation, and data collection on the strategies that reduce community violence and ensuring public safety; and to support research, evaluation, and data collection on the differential impact of community violence among demographic categories.
Section 130001. Comprehensive Paid Leave -- creates a new “Title XXII—Comprehensive Paid Leave Benefits in the Social Security Act, Section 2202(a) -- Entitlement to Comprehensive Paid Leave Benefits. All types of workers are covered for benefits: full-time and part-time workers including gig workers and other self-employed workers, in both the private and public sector (including federal, state, and local government employees), and without regard to employer size. Workers are covered without regard to tenure on their current job, so long as they meet eligibility criteria under section 2202(a). Workers will be covered either through a federal benefit, or through a qualifying “legacy state” or a comprehensive employer-sponsored plan for which the state or employer is reimbursed by the federal government. Individuals whose employment is covered by such a state or employer-sponsored benefit are not eligible for federal benefits for leave from that job.

Individuals are entitled to a federal comprehensive paid leave benefit generally for four weeks if they:

- have 4 or more hours of qualified caregiving during a week, in the 90-day period prior to submitting the application, or up to 90 days after submitting the application in advance;
- have any wages or self-employment income at any time during the period beginning with the most recent calendar quarter; and
- have at least $2,000 in wages during the most recent 8-quarter period.
## Proposed FY 2022 Funding Levels for Federal Education Programs (School Year 2021-22, in thousands)

<table>
<thead>
<tr>
<th>Federal Education Program</th>
<th>FY 2021 Final</th>
<th>FY 2022 Biden Budget</th>
<th>FY 2022 House</th>
<th>FY 2022 Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROPOSED: Title I Equity Grants</strong></td>
<td>NA</td>
<td>20,000,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>**PROPOSED: K-12 Infrastructure *</td>
<td>NA</td>
<td>10,000,000</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td><strong>PROPOSED: School-Based Health Professionals</strong></td>
<td>NA</td>
<td>1,000,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>PROPOSED: School Leader Recruitment and Support</strong></td>
<td>NA</td>
<td>30,000</td>
<td>0</td>
<td>30,000</td>
</tr>
<tr>
<td><strong>PROPOSED: Fostering Diverse Schools</strong></td>
<td>NA</td>
<td>100,000</td>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td>**PROPOSED: Teacher Leadership Development *</td>
<td>NA</td>
<td>200,000</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>**PROPOSED: In-Demand Credentials for Teachers *</td>
<td>NA</td>
<td>1,600,000</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>*<em>PROPOSED: Free Community College</em></td>
<td>NA</td>
<td>18,953,225</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td><strong>Title I - Grants to LEAs</strong></td>
<td>16,536,802</td>
<td>16,536,802</td>
<td>36,036,802</td>
<td>33,086,802</td>
</tr>
<tr>
<td><strong>Migrant Education</strong></td>
<td>375,626</td>
<td>375,626</td>
<td>382,626</td>
<td>375,626</td>
</tr>
<tr>
<td><strong>Neglected and delinquent</strong></td>
<td>48,239</td>
<td>48,239</td>
<td>48,239</td>
<td>48,239</td>
</tr>
<tr>
<td><strong>Homeless children and youth</strong></td>
<td>106,500</td>
<td>106,500</td>
<td>116,500</td>
<td>146,500</td>
</tr>
<tr>
<td><strong>Impact Aid</strong></td>
<td>1,501,112</td>
<td>1,541,112</td>
<td>1,552,112</td>
<td>1,566,112</td>
</tr>
<tr>
<td><strong>Comprehensive Literacy Dev. Grant</strong></td>
<td>192,000</td>
<td>192,000</td>
<td>192,000</td>
<td>192,000</td>
</tr>
<tr>
<td><strong>Title IV - Support &amp; Academic Grant</strong></td>
<td>1,220,000</td>
<td>1,220,000</td>
<td>1,305,000</td>
<td>1,320,000</td>
</tr>
<tr>
<td><strong>State assessments</strong></td>
<td>378,000</td>
<td>378,000</td>
<td>378,000</td>
<td>428,000</td>
</tr>
<tr>
<td><strong>Rural education</strong></td>
<td>187,840</td>
<td>192,840</td>
<td>192,840</td>
<td>199,840</td>
</tr>
<tr>
<td><strong>Education for Native Hawaiians</strong></td>
<td>37,397</td>
<td>37,397</td>
<td>40,397</td>
<td>42,397</td>
</tr>
<tr>
<td><strong>Alaska Native Education Equity</strong></td>
<td>36,453</td>
<td>36,453</td>
<td>36,453</td>
<td>36,453</td>
</tr>
<tr>
<td><strong>Promise Neighborhoods</strong></td>
<td>81,000</td>
<td>91,000</td>
<td>96,000</td>
<td>101,000</td>
</tr>
<tr>
<td><strong>21st century learning centers</strong></td>
<td>1,259,673</td>
<td>1,309,673</td>
<td>1,359,673</td>
<td>1,309,673</td>
</tr>
<tr>
<td><strong>Indian Education</strong></td>
<td>181,239</td>
<td>186,239</td>
<td>188,239</td>
<td>189,239</td>
</tr>
<tr>
<td><strong>Education Innovation and Research</strong></td>
<td>194,000</td>
<td>194,000</td>
<td>254,000</td>
<td>270,000</td>
</tr>
<tr>
<td><strong>Title II - Effective Instruction</strong></td>
<td>2,143,080</td>
<td>2,148,580</td>
<td>2,293,080</td>
<td>2,294,080</td>
</tr>
<tr>
<td><strong>Teacher quality partnership (HEA)</strong></td>
<td>52,092</td>
<td>132,092</td>
<td>132,092</td>
<td>90,092</td>
</tr>
<tr>
<td>Federal Education Program</td>
<td>FY 2021 Final</td>
<td>FY 2022 Biden Budget</td>
<td>FY 2022 House</td>
<td>FY 2022 Senate</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>---------------</td>
<td>----------------------</td>
<td>---------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Teacher and Leader Incentive Fund</td>
<td>200,000</td>
<td>200,000</td>
<td>200,000</td>
<td>200,000</td>
</tr>
<tr>
<td>Charter schools grants</td>
<td>440,000</td>
<td>440,000</td>
<td>400,000</td>
<td>440,000</td>
</tr>
<tr>
<td>Magnet schools assistance</td>
<td>109,000</td>
<td>149,000</td>
<td>149,000</td>
<td>179,000</td>
</tr>
<tr>
<td>Title III - English Language Acquisition</td>
<td>797,400</td>
<td>917,400</td>
<td>1,000,000</td>
<td>917,400</td>
</tr>
<tr>
<td>IDEA - Part B</td>
<td>12,937,392</td>
<td>15,537,429</td>
<td>15,537,429</td>
<td>15,537,429</td>
</tr>
<tr>
<td>IDEA Preschool</td>
<td>397,120</td>
<td>502,620</td>
<td>502,620</td>
<td>502,620</td>
</tr>
<tr>
<td>IDEA Infants and Families</td>
<td>482,000</td>
<td>731,850</td>
<td>731,850</td>
<td>731,850</td>
</tr>
<tr>
<td>Perkins CTE</td>
<td>1,334,848</td>
<td>1,354,848</td>
<td>1,384,848</td>
<td>1,384,848</td>
</tr>
<tr>
<td>Adult Education</td>
<td>688,667</td>
<td>713,667</td>
<td>738,667</td>
<td>722,667</td>
</tr>
<tr>
<td>GEAR UP</td>
<td>368,000</td>
<td>408,000</td>
<td>408,000</td>
<td>400,000</td>
</tr>
<tr>
<td>Research, dev., and dissemination</td>
<td>197,877</td>
<td>267,880</td>
<td>260,880</td>
<td>267,880</td>
</tr>
<tr>
<td>Statistics</td>
<td>111,500</td>
<td>111,500</td>
<td>114,500</td>
<td>111,500</td>
</tr>
<tr>
<td>Regional educational laboratories</td>
<td>57,022</td>
<td>57,022</td>
<td>59,022</td>
<td>60,022</td>
</tr>
<tr>
<td>National assessment (NAEP)</td>
<td>165,000</td>
<td>180,000</td>
<td>180,000</td>
<td>180,000</td>
</tr>
<tr>
<td>National Assessment Governing Board</td>
<td>7,745</td>
<td>7,745</td>
<td>7,745</td>
<td>7,745</td>
</tr>
<tr>
<td>Statewide data systems</td>
<td>33,500</td>
<td>33,500</td>
<td>34,500</td>
<td>33,500</td>
</tr>
<tr>
<td>U.S. Department of Education Discretionary Appropriations total</td>
<td>73,536,533</td>
<td>102,823,263</td>
<td>102,822,000</td>
<td>98,400,000</td>
</tr>
</tbody>
</table>

Proposed Funding Increases in **GREEN**

* Proposal requires MANDATORY annual funding
UPDATE ON FEMA REIMBURSEMENTS
Update on FEMA Reimbursements for COVID-19 Costs

From: Jeff Simering
Sent: Thursday, December 16, 2021
To: Chief Financial Officers; Legislative Liaisons
Subject: FEMA policy on reimbursing eligible emergency expenditures that may have been "fronted" with ESSER funds

Great City Schools CFOs and Legislative Liaisons:

After multiple discussions, conference calls, emails, and webinars with FEMA over the past six months under the Biden administration, we believe the reimbursement policies for the Public Assistance Program are becoming somewhat clearer. It is our understanding that FEMA will reimburse eligible emergency expenditures of school districts regardless of whether ESSER funds were initially expended to cover such costs -- provided that those ESSER funds are re-programmed to other allowable ESSER costs once the school district is reimbursed by FEMA (thereby not "double dipping" with federal funds).

As you will recollect, the prior administration virtually shut down FEMA reimbursements for emergency school expenditures in 2020. The new Biden administration then allowed reimbursement for eligible emergency expenditures made after the January 20, 2021 inauguration date. Later, the Biden administration announced that eligible reimbursements would be provided back to the start of the pandemic in January 2020.

In the intervening months in late SY19-20, SY20-21, and SY21-22, school districts have spent their own state and local funds on emergency expenditures (masks, PPE, cleaning and disinfecting, social distancing barriers, testing, tracing, vaxing, etc.) and often spent ESSER I, II, and III funds for such emergency expenditures as well. Previous FEMA statements prohibiting "double dipping" from different pots of federal funds left uncertainty as to whether ESSER outlays for eligible emergency expenditures could be later reimbursed by FEMA. The answer now seems to be "yes".

Many urban districts have millions, if not tens of millions of dollars in emergency expenditures from either state, local or ESSER funds that are eligible for reimbursement from FEMA, provided that any reimbursed ESSER funds are later reconciled and returned to the ESSER account.

The Council, therefore, calls your attention to the potential recovery of prior ESSER expenditures through application for FEMA Public Assistance reimbursement. We recognize that some of these expenditures go back two or three fiscal years ago and that staffing shortages for extracting that type of documentation remain a daily challenge. And, we understand the skepticism in dealing with FEMA. Nonetheless, we wanted to pass along the policy clarification on FEMA reimbursements. We also note that there is no assurance that FEMA paperwork, red
tape, and delays have necessarily improved. But it may be worthwhile to assess how much funding might be recovered for your school district through eligible reimbursements.

Please let us know your thoughts on this federal policy update.

Thanks.

Jeff
INFRASTRUCTURE
Summary of Bipartisan Infrastructure Bill

Enacted November 15, 2021

The $1.2 trillion bipartisan Infrastructure and Jobs Act (H.R. 3684) just signed by President Biden includes $550 billion in new federal infrastructure investments, revises and extends the critical highway and transit programs and other authorizations, and rescinds some unspent funds from the earlier COVID-19 emergency appropriations. The final bill is the result of negotiations between a small bipartisan group of senators and the White House following the April 2021 $2.2 trillion American Job Plan proposed by the Administration. Among the programs that were not included in the “Bipartisan Infrastructure Deal” was $100 billion for school infrastructure grants and tax subsidies.

New federal Infrastructure investments include:
- $110 billion for roads, bridges, and major projects;
- $66 billion for passenger and freight rail improvements;
- $11 billion for highway safety and pipeline safety;
- $39 billion for public transit;
- $65 billion for broadband infrastructure including state grants, bonds and $14 billion to underwrite internet provider subsidies for low-income families under the FCC’s Emergency Broadband Benefit program (EBB);
- $17 billion for ports and waterways;
- $25 billion for airports;
- $55 billion for water systems including $200 million for school lead pipe removal over 5 years;
- $73 billion for power grid improvements;
- $46 billion for resiliency projects including $500 million over 5 years building energy efficient improvements for state and local government, including schools;
- $7.5 billion for alternative fuel systems for school buses and ferries, including $5 billion over 5 years for electric school buses.

As noted above, new Bipartisan Infrastructure bill makes some limited federal investments related to school operations, including $5 billion for electric school buses, $200 million for lead pipe removal in schools, eligibility for public building energy improvements, and low-income family subsidies for monthly internet bills.
NUTRITION
On behalf of our members, including school district and state education leaders, school nutrition professionals, and K-12 education and nutrition advocates, thank you for providing the necessary school meal flexibilities to the National School Lunch and School Breakfast programs to ensure our nation’s children continue to be fed despite the disruptions caused during the COVID-19 pandemic. Your work has been critical in allowing school food service operators to continue participating in the federal child nutrition programs and provide snacks and meals to the students who need them.

We are grateful to see the inclusion of school meal program flexibilities in the FY22 Agriculture and Rural Development Appropriations Bill pertaining to fruit and vegetable variety, sodium, milk, and whole grain requirements. We are also appreciative of the language included in the continuing resolution (CR) bill to extend USDA’s waiver authority for nutrition programs until June 30, 2022. These flexibilities are essential as school districts continue to deal with the economic impacts of the pandemic, including supply chain disruptions, labor shortages, and rising food insecurity in local communities.

Districts across the country are facing various supply chain challenges in purchasing and receiving food through their regular procurement channels. Specifically, some districts and schools are experiencing unanticipated cancellation of food and supply contracts, lack of availability of certain foods, unexpected substitution of food products, increased shipping and
food storage costs, and increased food and supply prices due to COVID-19 supply chain disruptions.

We have heard from our members reports of food delivery trucks not showing up at all or being severely delayed, trucks showing up only half-full with incomplete orders, and delivering products that were not ordered. This has made it very difficult to plan meal menus during the school year. Regarding supply costs, districts are reporting up to 30% price increases for raw materials such as aluminum, paper, and plastic materials, which affect costs for foil sheets, lids, napkins, placemats, wipes, towels, food packaging, cutlery, and other common supplies for school food service operations. Moreover, this is occurring at a time when districts are struggling to hire and retain sufficient staff to administer meal programs, ensure program compliance, and feed students because of broader labor, market, and public health conditions outside of their control. As such, any flexibilities granted by Congress and USDA for meeting meal-pattern requirements, bidding and procurement rules, onsite monitoring, and nutrition reporting requirements are much appreciated throughout the pandemic.

We are working with the Biden-Harris Administration to ensure they understand the extraordinary impact of the supply chain disruptions on schools and offer ourselves as a resource for your offices as well. We are hopeful that efficient and effective solutions can be implemented soon, but in the meantime would like to thank you and urge Congress to maintain these school meal flexibilities so that districts can continue providing meals for students and customize service delivery to accommodate local needs and realities.

If you have any questions or would like to learn more about how to support our nation’s schools with feeding students during the COVID-19 emergency, please contact Elleka Yost, ASBO International Director of Advocacy, and Tara Thomas, AASA Policy Analyst, at eyost@asbointl.org and tthomas@aasa.org.

Sincerely,

AASA, The School Superintendents Association
American Federation of School Administrators
Association of Educational Service Agencies
Association of School Business Officials International (ASBO)
Council of Administrators of Special Education
Council of Chief State School Officers
Council of the Great City Schools
National Association of Elementary School Principals
National Association of Secondary School Principals
National Rural Education Advocacy Consortium
National Rural Education Association
National School Boards Association
Organizations Concerned about Rural Education
School Nutrition Association
Share Our Strength
Urban School Food Alliance
DHS “PUBLIC CHARGE GROUND FOR INADMISSABILITY” RULES
October 22, 2021

Attention: Comments on DHS Advanced Notice of Proposed Rulemaking for Public Charge Ground for Inadmissibility

CIS No: 2696-21
DHS Docket No: USCIS 2021--0013
RIN: 1615—AC74

Department of Homeland Security
U.S. Citizenship and Immigration Services
Regulatory Coordination Division
Office of Policy and Strategy
20 Massachusetts Avenue NW
Washington, DC 20529–2140

The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, submits the following comments and recommendations on the advanced notice of proposed rulemaking for the “Public Charge Ground for Inadmissibility” rules published by the Department of Homeland Security (DHS) in the August 23, 2021 Federal Register. The Council notes the detrimental and disruptive impact of the vacated 2019 Public Charge rule on a significant segment of the nation’s public school student population and their families. The Council specifically requests clarity in the upcoming rule to exempt non-cash assistance programs related to public elementary and secondary education and support services available from federal, state, and local governments from DHS public charge considerations and determinations.

Tens of thousands of students across the Great City Schools reside with families in which one or more family members have varying types of immigration or citizenship status. Within the family structure, children are often U.S. citizens, while one or more family members (i.e., parents, siblings, grandparents, or others in the household) may be either citizens, lawful permanent or conditional residents, have DACA status, have temporary protected status, have visas, or are undocumented. Frequent fluctuations in federal immigration policy have resulted in significant upheaval in the lives of many school children and their families, and have manifested in school absenteeism, behavior incidents, mental health issues, and declining academic performance for many affected students. The vacated Public Charge regulations exacerbated disruptions for the families of tens of thousands of school children with such mixed immigration and citizenship status affecting their financial, emotional, and even the physical well-being.

General Recommendation: The Council recommends: 1) exempting all non-cash assistance programs related to public elementary and secondary education and associated support services provided by the federal, state, or local governments from DHS public charge considerations and determination, and 2) such school-related programs and services and associated eligibility information and determinations not be subject to disclosure by the school district, the student, or their parents or guardians, or be considered by DHS in public charge determinations.
The vacated 2019 Public Charge regulations have already had a chilling effect on students that are legitimately eligible for certain education programs and related services but are hesitant to participate because the current income status of their family or household may negatively affect an individual family member’s future application for admission, extension, maintenance, or adjustment in immigration status or their application for citizenship. In short, school officials do not want eligible school children to avoid applying for the federal school breakfast, lunch or summer programs or school-based Medicaid and other health services, for example, because they might believe it would affect the consideration of a family or household member’s future immigration status or citizenship application.

Few parents possess a detailed understanding of the intricacies of federal statutory or regulatory law to make fully informed decisions regarding the information or public benefits that could be considered, directly or indirectly, in immigration status or citizenship determinations. Urban school districts have noted frequent instances of parents refusing to file school-based forms and documents – including applications for in-school program services for their children – for fear of negatively affecting their immigration status or future citizenship opportunities. While parental assumptions leading to refusing school-based services may appear to be overly guarded, the qualification information provided to determine a child’s program or service eligibility often includes household income statements which could later be used under the DHS public charge rules as evidence of current or past financial status of a family member or member of the household. The resulting non-participation in eligible programs deprives many students of essential services, including basic school-provided nutrition or disability related services, and undermines the efficiencies of scale built into critical federal programs like the National School Lunch and Breakfast Programs and the landmark ESEA Title I Program for Disadvantaged Students.

In sum, any program or service provided by state or local educational agencies for which students are determined to be eligible should be exempt and not considered by DHS to be a public benefit for the purposes of individual public charge determinations of a student, family member or member of the household. Moreover, further regulatory clarifications are needed that any application, documentation, or verification information collected by a public school for program eligibility, allocation, or qualification purposes would not be requested or subject to disclosure by the school district or the student and their parents or guardians in DHS public charge considerations.

Please contact me at rhart@cgcs.org or Jeff Simering at jsimering@cgcs.org if there are questions regarding these comments and recommendations.

Sincerely,

Raymond Hart
Executive Director
ROSENWORCEL NOMINATION
November 11, 2021

Senator Maria Cantwell, Chair
Committee on Commerce, Science, and Transportation
U.S. Senate
Washington, DC 20510

Senator Roger Wicker, Ranking Member
Committee on Commerce, Science, and Transportation
U.S. Senate
Washington, DC 20510

Dear Chair Cantwell and Ranking Member Wicker:

The Council of the Great City Schools is a coalition of the nation’s 75 largest central city school districts. Our members enroll over 8 million students, including approximately 28 percent of the nation’s Hispanic students, 29 percent of the nation’s African American students, and 25 percent of the nation’s children living in poverty. The Council is writing to enthusiastically recommend that Jessica Rosenworcel, acting chair of the Federal Communications Commission, be approved as permanent chair of the agency.

The Council has known Jessica Rosenworcel for many years. She has held a number of positions at the Commission and understands the issues that stakeholders face and the work that needs to be accomplished for the agency to meet the nation’s communications needs. Commissioner Rosenworcel’s notable foresight in highlighting the lack of at-home internet access for low-income students - years before the pandemic - hastened the Commission’s efforts to support continuous learning when schools closed in March of 2020. And her leadership as Acting Chair since January 2021 ensured a steady hand was directing the rollout of more than $10 billion in COVID-19 relief funding that Congress approved. This includes the Emergency Connectivity Fund and Emergency Broadband Benefit programs helping to keep students and families connected in our urban communities, as well as additional funding for telehealth services to address inequities in access to health care during the pandemic.

Technology access is at a vital stage in its K-12 evolution today. School shutdowns increased 1:1 instruction, moved a large portion of teaching and learning online, and expanded educator reliance on content-rich media sources. Even with most students and staff returning to physical classrooms this year, urban school districts are working diligently to ensure the benefits of digital learning continue to be a part of their educational offerings. It is essential that the Commission continues to encourage this trend by ensuring the E-Rate and other FCC programs focus support on those who lack means and opportunity, and that any future investments our nation makes in broadband deployment are centered around network access and cybersecurity.

For these reasons, the Council strongly supports Jessica Rosenworcel’s nomination as chair of the Federal Communications Commission. Thank you.

Sincerely,

Raymond Hart
Executive Director