



MEMORANDUM

DATE: **FEB 01 2018**

TO: Sharon Mar
Office of Information and Regulatory Affairs
Office of Management and Budget (OMB)

THROUGH: Tomakie Washington
Information Collection Coordinator
Office of the Chief Privacy Officer
U.S. Department of Education (Department)

FROM: Jason Botel
Principal Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the position of Assistant Secretary, Office of Elementary and Secondary Education

SUBJECT: Flexibility for Equitable Per-pupil Spending Application Template – Request for Emergency Clearance

Summary: This is a request for emergency paperwork clearance to enable local educational agencies (LEAs) to apply to implement a Local Flexibility Demonstration Agreement for Equitable Per-pupil Funding in the 2018-2019 school year. This flexibility is one of two new initiatives in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). It is a top priority of the U.S. Secretary of Education Betsy DeVos (Secretary) because it provides considerable flexibility to Local Educational Agencies (LEAs) in implementing major Federal education programs and ensures greater equity in funding and resources for all students. Specifically, by entering into a local flexibility demonstration agreement with an LEA, the Secretary would permit the LEA flexibility to consolidate eligible Federal funds with State and local education funding and to more equitably allocate those consolidated funds to schools based on weighted per-pupil allocations to benefit low-income and otherwise disadvantaged students.

Justification for emergency clearance: Pursuant to 5 CFR 1320.13, the Department requests that OMB review this collection under its emergency procedures. **This request for emergency clearance is based on harm to the public.** An LEA typically plans its allocation of funds to schools in the spring preceding the upcoming school year—and then does not make allocation

decisions again until the following spring, a full year later. Because LEA funding is cyclical and funding decisions are made in the spring of each year, an LEA that cannot apply this spring will be unable to use the flexibility until spring of 2019. In such a case, an LEA that would otherwise receive such flexibility would be delayed in equitably allocating significant funds to students most in need (*i.e.*, students from low-income families, English learners, and other high-need student groups as identified by the LEA).

The intention of Congress in creating this program was to provide relief from complex and burdensome requirements in order to facilitate the creation of a more equitable school funding system that meets specific criteria, understanding the acute and immediate need of educationally disadvantaged students. Congress initially provides this flexibility for 50 LEAs, with the authority to expand to all LEAs in the future upon meeting certain requirements. The spirit animating the statute is that the current set of rules guiding the allocation and use of federal funds prevent the creation a single, equitable system of school funding; that relief from these requirements is necessary to create a single equitable system; and that a single system of school funding meeting the requirements of the statute represents equitable per pupil funding for educationally disadvantaged students. Therefore, any delay risks enabling another calendar year of inequitable per pupil funding affecting educationally disadvantaged students in 50 LEAs, and could delay expansion to more LEAs in the long term, potentially affecting many more educationally disadvantaged students.

The Department is requesting OMB approval by February 7, 2018, so that it may collect applications by March 12, 2018, and award agreements by mid-May 2018. This timeline allows for an LEA to adjust its funding approach for the 2018-2019 school year if it is approved.

By contrast, if the Department were to undertake the usual information clearance process, under the most optimistic assumptions, the resulting form would not be available for use until the end of May (allowing for the 60-day and 30-day public comment periods as well as OMB review and Department review of comments). Under such a timeline, the Department would offer LEAs just over 30 days to apply and would then need approximately 60 days to review applications and negotiate with LEAs before announcing approved agreements. Accordingly, the earliest conceivable approvals would not come until the end of August 2018, well after LEAs have made funding decisions, and in many cases after the start of the 2018-2019 school year. The Secretary believes that delaying this flexibility constitutes significant harm to those LEAs, which are part of the public.

Significance of a local flexibility agreement: This new authority affords an LEA considerable flexibility to more equitably allocate its eligible Federal funds along with State and local funds, particularly recognizing traditional resource inequities faced by underserved student subgroups such as students from low-income families, English learners, and other high-need student groups as identified by the LEA. . The Secretary has made this program a top priority, as this authority holds significant promise educationally and in furthering the Administration's priorities to reduce burden and to expand local flexibility. Offering such flexibility to LEAs in time for them to implement it beginning in the 2018-2019 school year remains a high priority of the Secretary.

For these reasons, in order to allow LEAs the opportunity to implement this flexibility for the 2018-2019 school year, with its attendant benefits and cost savings, the application must be made immediately available. Absent emergency approval, that will not be possible. Full paperwork clearance would not afford an LEA sufficient time to apply, the Secretary time to review and approve its application, and the LEA time to make allocation and programmatic decisions in time for implementation in 2018-2019. In addition, section 1501 articulates the requirements and timeframe for expansion. Without evidence of successful implementation and applicable evaluation requirements, expansion may be further delayed.

The Department evaluated existing standard forms to consider whether they could be used for this purpose. As this opportunity provides LEAs with flexibility from statutory requirements, rather than funds, existing forms did not meet the unique purpose of this program.

The statute is extremely precise regarding the contents of the application. As a result, the information collection is drawn directly from section 1501(d), which identifies the elements that must be in an application for a local flexibility demonstration agreement. The Department has only requested the minimum information necessary to satisfy the statutory requirements of the application for flexibility.

Timeline

The Department hopes to review and approve LEA applications with sufficient time for approved LEAs to implement their agreements in the 2018-2019 school year. If the Department is able to release an application by February 7, 2018, LEAs could respond by March 12, 2018. The Department plans to review applications on a rolling basis with the earliest agreements made on or around May 11, 2018.

The Department is requesting OMB approval by February 7, 2018. There is a major national conference of the National Association of State Title I Directors (NASTID) that begins on February 7, 2018, which is attended by 3,000-4,000 State and LEA staff. The Department anticipates that announcing and promoting this newly-available application through such a large-scale event would maximize LEA understanding and involvement, as well as encouraging them to comment in the subsequent 60-day public comment period accompanying the forthcoming regular process.

Thank you for your prompt consideration of my request. If you have questions, please contact Jessica McKinney at (202) 401-1960.