



UNITED STATES DEPARTMENT OF EDUCATION

January 13, 2021

MEMORANDUM

TO: Lindsay Abate  
Office of Management and Budget Desk Officer

FROM: Hilary Malawer  
Deputy General Counsel

RE: Emergency request for Paperwork Reduction Act (PRA) approval

Pursuant to the Office of Management and Budget (OMB) procedures established at 5 CFR 1320, ED requests that the following collection of information, Maintenance of Effort Baseline Data for the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) and the Governor's Emergency Education Relief (Fund), the Education Stabilization Fund-State Educational Agencies Fund (ESF-SEA), and the Education Stabilization Fund-Governors Fund (ESF-Governor) under Section 18008 of the CARES Act, be processed in accordance with section 1320.13 Emergency Processing. ED has determined that this information must be collected prior to the expiration of time periods established under Part 1320, and that this information is essential to ED's ability to effectively implement section 18008 of the CARES Act, Pub. L. No. 116-136 (March 27, 2020) and address the economic disruption posed by the Novel (new) Coronavirus ("2019-nCoV").

Section 18008(a) of the CARES Act states that:

"A State's application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need-based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State's support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act"

ED is requesting an emergency clearance to provide support to Governors and State Education Agencies in submitting this baseline data and carrying out the requirements of the CARES Act.

If this collection is not allowed to proceed, the Department will not be able to fulfill the mandates of the CARES Act, and properly monitor that States and Outlying Areas

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maintain the level of support for elementary and secondary education, and State and Outlying Areas support for higher education in fiscal years 2020 and 2021 as agreed to in the GEER Fund, ESSER Fund and ESF-SEA Fund, and ESF-Governor Fund Certifications and Agreements.

Given the short timeframe, ED is unable to consult with the public prior to issuing the forms; however, in the publication of frequently asked questions regarding the Maintenance of Effort requirement, ED issued guidance and a form for States and Outlying Areas to submit this statutorily required data. (See Appendix A in <https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>) We estimate that the form will take on average 5 hours to complete.

ED requests approval of the submission by August 7, 2020. Given the inability to seek public comment during such a short timeframe, ED requests a waiver from the requirement to publish notice in the Federal Register seeking public comment during the period of OMB review.